
P R O T E S T S,

&c. &c.

THE
PROTESTS

OF THE

HONOURABLE W. F. ELPHINSTONE,

JAMES PATTISON, Esq.

JAMES DANIELL, Esq.

ROBERT THORNTON, Esq.

JOHN HUDDLESTONE, Esq.

J. A. BANNERMAN, Esq.

DIRECTORS of the EAST INDIA COMPANY,

Against the Continuance

OF

SIR GEORGE BARLOW

IN THE

GOVERNMENT OF MADRAS ;

Read at a COURT of DIRECTORS held on Wednesday
the 7th of August, 1811.

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1812.

PREFACE.

THAT the least informed reader of these Papers may understand the transactions to which they refer, it may be right to acquaint him, that in the year 1809, serious disturbances broke out in the East India Company's Army serving under the Madras Government. These disturbances, though the natural fruit of a harsh and bitter policy, were wisely condemned by the Directors, as soon as the intelligence reached them, in a tone of severe reprobation; and their Governments abroad received their sanction and support in the means adopted to quell them.

This support was the more liberally conceded to the Governor (Sir George Barlow), because he had taken care to be the first who told the story. General M'Dowall was lost on his passage, and Mr. Buchan, the hired agent of Sir George Barlow, arrived with his dispatches before any other intelligence had reached England. By degrees, however, the subject was better elucidated. Complaints, memorials, petitions crowded in against him without number. But he had secured

in his favour one or two leading members of the Court; and through their influence, for a time, every thing that breathed a prayer, or led to an inference against him, was heard with unwilling ears. Such, however, is the force of truth, even amongst a body so constituted, that a very different feeling began to manifest itself towards the middle of last year amongst the Directors. It seemed as if they were beginning to suspect, that the continuance in the Government of Madras, of a man who had ingeniously contrived to be hated by all ranks and classes of people, was neither politic nor safe. Accordingly, notice was given of a motion to recall him. It was debated on the 23d of July, 1811, and negatived by a majority of *two*. Nor would this have happened, had it not been for a sudden change of opinion in one or two of the Court; a change at complete variance with the language they had uniformly held since the subject had been first agitated. This problem can only be solved by the influence of the President of the Board of Control, who being a relation of Mr. Buchan, had entered with much personal zeal into the cause of Sir George Barlow. The number of that Board is twenty-four. It seems, therefore, that Sir George Barlow has obtained a triumph, which an exalted mind would consider a disgrace; and that he now holds his place on a tenure, which virtue or pride ought to have taught him to despise. The Protests, signed by six Gentlemen out of those who voted against him, comprehending no

mean proportion of whatever of talent or honour is to be found amongst them, are the subject of the following pages. They are printed from the copy called for by the House of Commons, preparatory to a motion of which notice has been given in that House, for his re-call.

Besides the military affairs, the Protests advert to a passage in his administration, of which little has been hitherto known. It seems that he has been guilty of an alarming interference in the proceedings of the King's Court at Madras. This is a short statement of that interference.

The Advocate General, Mr. Anstruther, had purchased of a man of the name of Reddy Row, a forged bond of one of the Nabobs of the Carnatic, for the liquidation of whose debts an Act of Parliament had been passed. Several creditors, interested of course in wiping away unjust debts, had objected to this claim, and impeached it by a prosecution of Reddy Row and his accomplices. Sir George Barlow, deferring to the mercenary advice of the Advocate General, took the criminals under his protection; dispatched a civil servant, at the expence of 1400 pagodas to the Company, to procure witnesses in their behalf; deprived the Magistrate, who had committed the delinquents, of his office; and drove one of the prosecutors (Benjamin Roebuck, Esq.) from his place and its emoluments from the Presidency, to a reduced allowance and petty situation

at a remote station, where, at the advanced age of 65, he died literally of a broken heart. Another of the prosecutors he ordered home to England.

The verdict of three successive Juries, however, confirmed the justice of the prosecution. But their verdicts were pronounced to be *factions*, and the Chief Justice was induced to recommend the persons convicted, Reddy Row and Anunda Row, for the King's pardon. That pardon was granted; but before the pardon arrived at Madras, Reddy Row, protected and caressed by Sir George Barlow, was detected in another forgery, and evaded the consequences of his crime by poisoning himself; and the very day when the pardon thus obtained was read in Court, the other object of it, Anunda Row, was found guilty of another, but a similar offence. The Advocate General has since expressed his acknowledgment of his own error, in terms of the most abject apology. To such an extremity did Sir George Barlow carry his resentments on this occasion, that several persons, who had served on these juries, unaccountably felt his displeasure, by their sudden dismissal from their situations, which was wholly inexplicable on any other ground, than that they were punished for the verdicts they had given.

If these matters, so disgraceful to the British character in India, pass over without inquiry, it may justly be allowed us to be out of humour

with the age we live in. Such things would not have been overlooked in better times. Authenticated charges of injustice and persecution against a colonial Governor, would have provoked, at least, an inquiry. But the present case has hitherto been scarcely complimented with a discussion ; a circumstance, attributable either to its having been forgotten amongst matters of nearer, though not more important interest, or to an ill-omened indifference to all abuses of authority in the *distant* parts of the British Empire.

COPY of the DISSENTS

TO THE

Court's Resolutions of the 23d July, 1811.

AT a Court of Directors, held on Wednesday the 7th August, 1811;—

Four Dissents to the Court's Resolution of the 23d ultimo, as to Sir G. Barlow remaining in the Government of Fort St. George, were read; viz.

One signed by the Honourable W. F. Elphinstone, James Pattison, and James Daniell, Esquires;

One by Robert Thornton, Esq.

One by John Hudleston, Esq.

One by J. A. Bannerman, Esq.

To the Honourable the COURT of DIRECTORS of
the EAST INDIA COMPANY.

Gentlemen,

We dissent from the Resolution of the Court of the 23d instant, negating the Motion,—

“ That on a review of the Proceedings of this
“ Court, on the information received from India, relative to the late unnatural rebellion at the Presidency of Fort St. George, the Court contemplate
“ with satisfaction the permanency which the measures adopted by the Court are calculated to give to
“ the state of order and tranquillity, into which the

“ Settlement had been brought and was left at the period of Lord Minto’s return to Bengal.

“ That any farther inquiry into the causes which led to the disturbances alluded to, is now become unnecessary, and could only tend to a revival of those animosities and erroneous principles, which it is the earnest desire of this Court may be totally suppressed, in order that their baneful effects in producing those evils, which of late there has been so much cause to censure and deplore, may be committed to eternal oblivion.

“ That although the Court approve the zeal and integrity of Sir George Barlow, the present Governor of Fort St. George, they deem his continuance in that station inexpedient, and not calculated for the attainment of the objects above stated, which the Court are decidedly of opinion may be more effectually promoted by a reform of that Government.

“ That as it is always most desirable that his Majesty’s Ministers and the Court of Directors, should act with the greatest confidence and unanimity, and most particularly on a business so delicate and important as the present; **RESOLVED**, therefore, That the Chairman and Deputy Chairman be desired to wait upon Lord Melville, President of the Board of Commissioners for the Affairs of India, with a Copy of these Resolutions, and, in concert with his Lordship, to form a new Government for Madras with as little delay as circumstances will permit,” for the following reasons:—

BECAUSE,—The moderate tone of the Motion, and the avoidance of all mention of the causes which have led to the present alienated state of the public mind at Madras, had for their object the securing a measure of great public importance, with as little personality as possible; and while it gave to His Majesty’s Minis-

ters their due weight, it at the same time evinced a wish to give credit to Sir George Barlow and the Government of Fort St. George, for the fortitude and zeal displayed by them in the suppression of the rebellion, without pressing into prominent notice upon the records the series of political errors and arbitrary conduct, both in the Civil and Military Departments, which produced general dissatisfaction throughout the Settlement; and by a deplorable chain of causes and effects; led so large a number of brave men to forget their first duties, and tarnish the high reputation they had earned in the field by revolt against legitimate authority.

BECAUSE,—The Motion, if adopted, would have given ample time to His Majesty's Government, in concert with the Chairman and Deputy Chairman, to whom such power was proposed to be delegated, to deliberate upon a solid basis, and with due deliberation, such a firm, able, and popular Government, for the settlement of Madras, as Lord Minto himself (on all occasions the strong panegyrist of Sir G. Barlow) declares to be absolutely necessary for the restoration and maintenance of discipline and harmony, and for which, in his dispatch of 5th February, 1810, paragraph 227, *he acknowledges that Sir G. Barlow, under the circumstances in which he is placed, is wholly unfit.*

BECAUSE,—The time is now arrived, when, free from the danger of the appearance of controul from external circumstances, the Court, having duly investigated the causes of the late lamentable events, and having traced them to their true source, may justly appreciate the fortitude and zeal so heroically attributed to Sir George Barlow's Government; and as the only laudable result of those qualities in their fullest exertion, was the suppression of revolt instigated by its own tyranny and oppressions; we must pronounce

our definitive opinion to be, that the praise due to that Government is at best of a negative nature, its only merit being that of having arrested mischief created by *itself* in its progress towards the destruction of the Settlement, and perhaps of British India.

BECAUSE,—The errors of Sir George Barlow's Government, which the rejection of the motion compels us to state distinctly, aggravated as they are by harsh and cruel conduct to individuals, stand recorded on the Military and Civil annals in numerous, deplorable, and incontestible instances; and,

Treating first of the Military discontents, and commencing with the case of Lieutenant Colonel Munro, we find as subjects of unqualified reprobation:

1stly. The publicity given to Lieutenant Colonel Munro's Report on the Tent Contract, in disregard of the prophetic declaration of the Adjutant General, Colonel Capper, to whom it had been submitted, that *those very passages* in it, which in effect proved so highly objectionable to the Army, and were in fact the corner-stone of all the subsequent mischief, were of a nature to excite the most lively feeling among the Officers; and therefore required on the score both of justice and prudence, the most deliberate investigation previously to their publication.

2dly. The release of Lieutenant Colonel Munro, by order of Government, on an appeal made by him to that authority, from the arrest under which he had been placed by the Commander in Chief; an appeal which we consider in itself expressly contrary to Military discipline and subordination, but which was rendered doubly objectionable by the circumstances under which it was conveyed; one copy having been transmitted to Government through the medium of its Civil Secretary, while on the *very same day*, under a false show of duty, another was tendered to the Com-

mander in Chief for transmission through the usual and only proper channel.

3dly. The refusal of Government to forward to the Court of Directors a most respectful memorial, signed by a great number of Officers commanding corps, humbly submitting a request, that the aspersions which they conceived levelled at their characters by certain expressions in Lieutenant Colonel Munro's Report on the Tent Contact, might undergo strict investigation; and pledging themselves solemnly to abide patiently and submit implicitly to the Court's decision; which refusal, tending as it naturally did, by the contemptuous manner in which it was returned to them, to exasperate the Officers, was literally acted up to by the Government, and the memorial was withheld from the Court; and this culpable omission, concealing from the Court the moderate view of the case entertained by the Officers, and naturally inducing a belief that the paper was of a highly objectionable nature, has been censured by the Court accordingly.

4thly. The unjust and ill-advised suspension from the Service, of Major Boles, for a strict execution of his duty in the promulgation of the General Order of the 28th of January, 1809, issued by the Commander in Chief, General M'Dowall, on his departure from Madras, which suspension, though at first considered too severe by the Court, afterwards received its sanction under the erroneous principles urged by the Judge Advocate Colonel Leith, and chiefly on account of the address to Major Boles, and the subscription in his favour, acts neither of his seeking nor within his controul; but this act of the Government has been at length declared, after the most solemn deliberation, in the Court's dispatch of the 22d of February, 1811, approved by the Board of Controul, "not to be upheld by the legal authorities advanced

“in support of it,” and as such must be considered unjust, unwarrantable, and tending to throw into confusion every principle of Military subordination.

5thly. The suspension from the Service of Lieutenant Colonel Capper the Adjutant General, on his manly and honourable declaration, that Major Boles had acted in obedience to his commands in issuing the General Order above alluded to, aggravated by the refusal on the part of Government to see Colonel Capper, and listen to the explanations he was prepared to offer in justification of his conduct; which explanations, if attended to, might have led to the immediate restoration of both those officers to the Service, and have prevented the extraordinary irritation produced by their unjust suspension.

6thly. The harsh and altogether unnecessary restraint imposed upon Major Boles, subsequently to his suspension, and which has been disapproved by the Court, in their dispatch of the 22d of February, whereby he was prevented from returning to Europe on board the Lady Lushington, after he had engaged for his passage by that ship; a restraint which not only evinced a wanton abuse of power, but gave time for, and led to the address of the Officers to Major Boles, and the subscription in his favour, which indiscreet and reprehensible measures of the Officers were afterwards urged by the Government as proofs of disaffection and insubordination against them, and against Major Boles himself; while, in truth, the cruel persecution of that Officer was the real cause both of the address and subscriptions, as it excited a sense of commiseration for his suffering, leading to the natural results of comments on the measure, and offers of friendly relief.

7thly. The General Orders issued by Government, under date of the 1st of May, 1809, removing from their station and staff appointments, and suspend-

ing from the Service the several Officers therein named, upon vague and undefined charges, preferred on *ex parte* evidence, and against which the parties, thus publicly denounced as aiming to subvert the Government, had no opportunity allowed them to defend themselves; which measure may be truly deemed the parent of the revolt which ensued, as the Officers felt themselves declared thereby to be completely at the mercy of a vindictive Government, apparently determined to subject them to its arbitrary will, without hope of redress from a Court Martial, the only legitimate resort for the Military character suffering under unmerited imputation.

Further, we dissent from the Resolution of the 23d instant :

BECAUSE,—In its Civil conduct the Government of Madras has been guilty of equal errors, and still more palpable injustice, without the shadow of excuse; which is advanced in extenuation of its Military aggravations, namely, the danger and crisis of the moment, whereby the affection and respect of the Settlement have been irretrievably alienated, and sentiments directly opposite have taken place of those feelings. And the following instances selected from the mass, will incontestibly prove the want of prudence, foresight, temper and humanity, in the conduct of this mistaken Government.

1stly. In the case of Mr. Sherson (on whose innocence or guilt we do not hazard an opinion, as it is now at issue in equity before the Supreme Court at Madras) the decidedly hostile part taken by the Government, on a hasty view of the question, against an old, and till the present charge, an unimpeachable Servant, by suspending him the Service during the investigation of the charges preferred against him is known to have produced the first symptoms of agitation in the Civil part of the Settlement, on account

of the manifest partiality it displayed ; while in India, it is peculiarly the bounden duty of the Governments to abstain from any show of hostility towards persons accused, on account of the well known weight and effect on the minds of the Native witnesses of any such demonstration on the part of the Supreme Government.

2dly. The removal of Mr. Cecil Smith from his office of Civil Auditor, on the charge of a flagrant violation of his duty, though no specific offence has been brought forward against him beyond an indiscreet warmth of temper, and his only crime appears to have been the delivery, by order of Government, of an audit of Mr. Sherson's accounts of a more favourable nature than was expected, which removal on such a charge, was coupled with the extraordinary appointment of this gentleman, wholly ignorant as he is of the Native languages, to be third Judge in the Provincial Circuit Court of the Northern Division, establishing by *inference* that in the opinion of the Government " a flagrant violation of duty," and the positive disqualifications above alluded to, are no bar to a seat on the bench of a judicial tribunal.

3dly. The interference of the Government, one member * of which is known to have been the proprietor of a forged bond to a very large amount, in prosecutions instituted against individuals suspected of being, and since unequivocally proved to have been, the fabricators of forged bonds, purported to have been granted by the late Nabob of the Carnatic, and especially by the appointment of the Company's Law Officers, both of whom were proved, and have since acknowledged themselves to have been interested in the *very bond*, the validity of which was the subject of trial, to defend the cause of Reddy Row,

* Mr. Casamajor, one of the Council.

Anunda Row, and Mr. Batley, accused and since convicted of the crimes of forgery and perjury.

4thly. The dispatch of Mr. Saunders, a Company's Servant to Manargoody and Chillumbrum, the former of which places alone was visited by him, for the purpose of collecting evidence in favour of Mr. Batley, charged with, and since convicted of the crime of perjury, the result of which was the production of some miserable wretches, secure in the protection of Government, whose testimony was totally disregarded by the Court. The interference of Government thus to procure evidence for this criminal being upheld at the Company's expence to the amount of 1,400 pagodas.*

6thly. The removal of Mr. Maitland from his situation of Civil Magistrate, for having committed Reddy Row and Anunda Row on a charge of forgery, sworn to by two witnesses; a committal strictly consonant with his duty, but which (favoured as Reddy Row was by the Carnatic Commissioners and the Advocate General) was considered *factionous*, and deserving such a mark of the displeasure of Government; which removal produced an extraordinary sensation in the Settlement, as demonstrating to what blameable lengths the Government of Sir George Barlow was prepared to proceed, against all persons who presumed to exercise even their most sacred duties in opposition to the partial views of the Government.

7thly. The removal from the Presidency of several respectable persons, who had served as Jurymen on

* This sum was afterwards ordered by Sir George Barlow to be defrayed out of the fund, destined by act of Parliament for the payment of the Creditors. So that the Prosecutors, who indicted those persons for committing frauds on that fund, were actually obliged to pay for the very defence of the wretches who had defrauded it!

the trials, without any alleged cause, which was naturally interpreted to have been occasioned by the decision of those legal authorities in favour of the legitimate creditors of the Nabob, who had prosecuted the forgers of the bonds to conviction.

8thly. The removal from his offices of Mr. Roebuck, an old servant of known and tried zeal and ability, especially displayed in the management of the Mint, for which he had received the thanks of the Supreme Government, without any alleged cause, and the banishment of that Gentleman to Vizagapatam, in spite of his endeavours to appease the anger of Government (which he supposed levelled at him for being one of the Prosecutors of the trial of Reddy Row) by a declaration that he had withdrawn himself wholly from those proceedings; in vain did he urge his age and services; his sentence is pronounced; he removes to Vizagapatam, and in that unhealthy climate he dies within a few weeks of a broken heart!! The injustice and cruelty of persecuting to such an extremity, a gentleman of high character, for an endeavour to defend his property against a horde of perjured swindlers are too glaring, and we shall ever consider *the sacrifice of this gentleman an indelible stain on Sir George Barlow's Government.*

9thly. The withholding from the Court the consultations upon these important trials, whereby their true merits were concealed, while the opinions of the Chief Justice and Advocate General were studiously brought forward; in consequence of which, and of the unusual refusal of Government to suffer the trials to be printed, not only was the Court kept in the dark, but the King's Government was induced to advise His Majesty, on the representation of the Chief Justice, though in opposition to the sentence of three respectable Juries, two of which were special, and

composed of Gentlemen who filled the first situations in the Settlement, to grant a pardon to those convicted criminals; which determination must now be matter of deep regret, as subsequent events, and the suicide of Reddy Row, on the discovery of his numerous crimes and forgeries by the Commissioners, have proved to demonstration, that the sentence of "Guilty" pronounced upon them was a just sentence, and deserving of high approbation, being a manful stand of legal and highly gifted Juries against the single opinion of a Judge, whose notions, to say the least of them, *savoured in these trials too strongly of prejudice and prepossession.**

We dissent, moreover, from the Resolution negating the motion of the 23d instant, because, in two recent instances, Sir George Barlow has shown himself highly deserving of severe censure from the Court, namely:

1stly. In dismissing Mr. Petrie from the Council, on the receipt of a letter from the Secretary, Mr. Ramsay, acquainting him that such had been the Resolution of the Court, while it was his duty as a man, a gentleman, and a governor entrusted with such high interests, to wait till the arrival of the dispatch which should *actually order* such a change in the Council, and not to indulge his petty spleen and malevolent passions at the expence of decency, and in violation of the law, and we consider this removal, in anticipation of clear and distinct orders from the Court, *to have been wantonly and grossly illegal.*

2dly. The delay, not to say refusal, of Sir George Barlow to appoint Colonel Agnew to the situation of Adjutant General, to which he had been recommend-

* The name of this man ought to be recorded. His name is Strange, and a relative of Lord Melville, late President of the Board of Control. The secret history of this business will shortly be published.

ed by the Court in terms too explicit to be misunderstood, and the continuance of junior Officers in that and other high situations on the Staff, in opposition to the declared opinion of General Hewit, who had been called to Madras by Lord Minto, for the purpose of making salutary regulations for the management of the Army, and who had declared it absolutely necessary to appoint to situations of such high trust, Officers of distinguished reputation and *experience*, and of a rank not below that of a Field Officer.

On the whole review of those multiplied errors, blended with harsh and oppressive conduct, we feel it our duty to put upon the record our solemn and deliberate dissent from the Resolution of the 23d instant, which, by negating the Motion for the removal of Sir George Barlow, and a reform in the Government of Madras, virtually declares that Government worthy the confidence of the Court, while it is our firm opinion, that the alienations of the affections of so large a proportion of the Company's Servants, Civil and Military at that Settlement, the lamentable fate to which India was exposed by the late rebellion, and the serious evils which it is possible may yet ensue from the adoption of the extreme measure of separating the Sepoys from their European Officers, a measure which, if justifiable at all, a crisis of the most imminent peril alone could justify, and which was justified *by no such crisis*, as the early approach of Lord Minto was hailed by all, except Sir George Barlow and his Council, as the harbinger of returning order and peace; are calamities which we should not have had either to deplore or apprehend, if the administration of the Madras Government had been conducted on the principles of justice, moderation, humanity, or true wisdom.

*The notorious unpopularity** of Sir George Barlow throughout the settlement is moreover considered by us, if it stood alone, as a sufficient cause for his removal, as we fully agree with Lord Minto in his observations in the letter above alluded to, paragraph 235, "Real grievances, it will be felt universally, should in all cases, and in all circumstances, be redressed; but after revolt has been subdued, and when the motive of healing measures cannot be misinterpreted, it will not deserve the charge of weakness, but appears to me rather a point of true magnanimity, that a Government should study even the passions, the temper, the prejudices, and the errors of those who are subject to their rule." And the petty details of the fruitless endeavours used to induce the Officers of one of His Majesty's regiments to dine at the Government House, and of the march of a regiment of Sepoys 500 miles from the Settlement, on account of the aversion displayed by the Officers in a refusal to partake of Sir George Barlow's hospitalities, would, perhaps, be unworthy of notice under any other view, but that of affording strong additional proof, that genuine harmony and good-will can never be expected to resume their sway under a Government which has provoked such bitter dissensions, and which, though it has succeeded in obtaining a temporary triumph, must, from the nature and causes of the contest in which it has been engaged, despair of ever gaining the least ascendancy over the affections of the community.

We have the honour to be,

Gentlemen,

Your obedient Servants,

*(Signed) WM. FULL. ELPHINSTONE,

JAS. PATTISON,

J. DANIELL.

East India House,
6th August, 1811.

* An unpopularity not confined to the Europeans, but diffused amongst every class of our native subjects in India.

To the Honourable the COURT of DIRECTORS of
the EAST INDIA COMPANY.

Gentlemen,

I beg to dissent from the decision of the Court of the 23d instant, negating the Motion,—

“ That on a review of the Proceedings of this
“ Court on the information received from India, re-
“ lative to the late unnatural rebellion at the Presi-
“ dency of Fort St. George, the Court contemplate
“ with satisfaction the permanency which the mea-
“ sures adopted by the Court are calculated to give
“ to the state of order and tranquillity into which the
“ Settlement had been brought, and was left at the
“ period of Lord Minto’s return to Bengal :

“ That any further inquiry into the causes which
“ led to the disturbances alluded to, is now become
“ unnecessary, and could only tend to a revival of
“ those animosities and erroneous principles, which
“ it is the earnest desire of this Court may be totally
“ suppressed, in order that their baneful effects in
“ producing those evils, which of late there has been
“ so much cause to censure and deplore, may be
“ committed to eternal oblivion :

“ That although the Court approve the zeal and
“ integrity of Sir George Barlow, the present Go-
“ vernor of Fort St. George, they deem his continu-
“ ance in that station inexpedient, and not calcu-
“ lated for the attainment of the objects above
“ stated, which the Court are decidedly of opinion
“ may be more effectually promoted by a reform of
“ that Government :

“ That as it always is most desirable that His Ma-
“ jesty’s Ministers and the Court of Directors should
“ act with the greatest confidence and unanimity,
“ and most particularly on a business so delicate and
“ important as the present :

“ Resolved, therefore, That the Chairman and Deputy Chairman be desired to wait upon Lord Melville, President of the Board of Commissioners for the Affairs of India, with a Copy of these Resolutions, and, in concert with his Lordship, to form a new Government for Madrass, with as little delay as circumstances will permit :”—

FOR the Reasons here recorded ;—

Ist. BECAUSE,—Though I lament in common with every individual of the Court, the criminal excesses of a large proportion of the Officers belonging to the Madras Army, and though I am most willing to bear testimony to the great zeal and fortitude displayed by Sir George Barlow in quelling the mutiny, and to the incorruptible integrity manifested in the general discharge of his official duties, I consider the disaffection which prevailed in 1809 at Fort St. George, and throughout its dependencies, as chargeable in no small degree to the following important errors in the conduct of the local Government ; errors which, though not dwelt on in the Motion, for reasons sufficiently obvious, are of too grave a nature to be overlooked in a dissent from the decision on that Motion.

1. The release of Lieutenant Colonel Munro, by order of Government, on an appeal made by that Officer to the Civil authority, contrary to military discipline and subordination, from an arrest under which he had been placed by the Commander in Chief.

2. The refusal of the Madras Government to forward to the Court of Directors, a Memorial subscribed by a number of Officers commanding corps, containing a statement of complaints and alleged grievances, with which it was highly important that the Court should have been early acquainted ; a refusal which, when coupled with the careless neglect,

or wilful and culpable omission of the same Government to furnish the Court by the first opportunity with requisite information, and the indispensable means of judging of the wisdom or indiscretions with which its delegated authority was exercised, at a crisis when the interests not only of the East India Company but of the British Empire were at stake, tended both to aggravate discontents abroad, and to produce indecision at home.

3. The suspension from the service of Colonel Capper and Major Boles, for a strict execution of what they deemed, or might fairly conceive to be, their duty, in promulgating the General Order, 28th January, 1809, issued by the Commander in Chief, the late General Macdowal, on his departure from Madras, a measure of the Madras Government, which has been decided upon, and condemned by the Court.

4. The further aggravating harshness practised towards Major Boles,* in the refusal to permit him to depart from Madras, on the Sir Stephen Lushington, after he had formed an arrangement for coming home in that ship, which arbitrary and unnecessary restraint led to a very improper subscription among his fellow Officers in Major Boles's behalf, and by occasioning new acts of severity against the subscribers, eventually gave rise to a re-action of fresh discontent against the Government.—

Illy. BECAUSE,—The discontents which were prevalent during the course of 1809, in the Civil part of the community at Madras, as well as the Army (their simultaneous existence offering in itself a strong

* It would be difficult to assign a motive for the wanton and petty persecutions practised by Sir G. Barlow on his victims, without tracing them to a sort of luxury he felt in acts of severity; a pure and unmixed love of tormenting his fellow-creatures. A full detail of these things is now in the press.

ground of presumption that the disaffection of the Military Officers did not proceed from any circumstances peculiar to that profession) may be traced to the following among other reprehensible acts of the Government.

1. The interference of Government, contrary to justice, prudence, and the obligations of duty, in prosecutions instituted against individuals suspected as the fabricators of certain bonds, purporting to have been granted by the late Nabob of the Carnatic, espically in appointing the Company's Law Officers, themselves interested in the suspected bonds, to defend Reddy and Anunda Row, accused and since convicted of forgery; in assigning the same Law Officers as Counsel to Mr. Battley, who, notwithstanding all the assistance and support he received from Government on his trial, was convicted of perjury; and in dispatching Mr. Saunders, a Company's servant, to Manargoody, to collect evidence at considerable expense to the Company, in favour of Mr. Batley; a measure which, when it is recollected that the witnesses giving this evidence were not believed upon their oaths, amounted to a subornation of perjury.

2 The persecutions which, in various instances, were exercised against those who took a part in the legal proceedings tending to bring these criminals to justice, and to punishment; and, specifically, in the removal of Mr. Maitland* from his situation of Civil Magistrate, on account of what was *strangely* termed "*his factious proceedings*," in having committed Reddy and Anunda Row on a charge of for-

* Mr. Maitland was specifically removed from his office of Magistrate by Sir George Barlow, for having, in the course of his duty as a Justice of the Peace, committed the two persons who were subsequently convicted.

gery, sworn to by two witnesses; in the removal from the Presidency of respectable persons, who had served as Jurymen, without any sufficient cause; and above all, in the removal of Mr. Roebuck, an old servant of the Company, from his office of Mint Master, and the banishment of that gentleman to Vizagapatam, where he died soon after, without any reason being assigned for this extraordinary act of harshness and oppression, and without any other supposable ground for it, than that, with a view to the protection of his own property, as one of the legal creditors of the late Nabob of the Carnatic, Mr. Roebuck had instigated, or supported from his own funds, these prosecutions against the fabricators of the forged bonds.

III^{dly}. BECAUSE,—The vigour for which Sir George Barlow's Administration is admitted, in some instances, to have been most creditably distinguished, has in others been wonderfully misapplied; and on no occasion more than when ignobly employed in breaking up a seminary, and in dispersing the scholars belonging to it throughout India, because they had declined accepting an invitation from Lady Barlow to a ball or assembly; a mind so constituted as to busy itself about such offences seems to me incompetent to govern a great empire, and incapable of maintaining an ascendancy in the affairs of men.

IV^{thly}. BECAUSE,—I am of opinion, that in some recent instances Sir George Barlow has acted in a manner disrespectful towards the Court. The Court's recommendation to appoint Colonel Agnew to the office of Adjutant General has not been complied with, nor has the Madras Government vouchsafed to offer any explanation for declining to appoint him, although the receipt of the letter containing the recommendations has been duly acknowledged; and

the dismissal of Mr. Petrie* from Council, on receipt of a paragraph which stated that the Court had passed a resolution to that effect, and which paragraph was transmitted by the Secretary Mr. Ramsay, with an explanation that it would make part of a future dispatch, to say the least of it, was highly precipitate and indecorous, if not illegal; delicacy towards Mr. Petrie, as well as respect towards the Court, ought to have induced the Government to wait their regular instructions, before they carried into effect a measure of this personal nature.

Vthly, BECAUSE,—According to any views of policy, although the supreme governing power of a State ought neither to be swayed by popular clamour, nor yield to unlawful combinations among any particular class of its subjects, public opinion ought always to be consulted in the choice of those to whom authority is delegated; and I entirely concur in the following analogous sentiment expressed in the 235 parag. of a dispatch from Lord Minto, dated 5th of February 1810.—“ Real grievances, it will be felt
 “ universally, should in all cases and in all circum-
 “ stances be redressed, and when the motive of heal-
 “ ing measures cannot be misinterpreted, it will not
 “ deserve the charge of weakness, but appears to me
 “ rather a point of true magnanimity, that a Govern-
 “ ment should study *even the passions, the temper,*
 “ *the prejudices, and the errors of those who are sub-*
 “ *ject to their rule.*”

Vthly. BECAUSE,—It is notorious, that though

* Such was Barlow's indecent precipitation to exhibit his triumph over Mr. Petrie, (a triumph for which he was indebted to a majority of one, or according to some statements, to the mere drawing of lots in the Court of Directors) that he took advantage of this letter, which contained no formal, or official dismissal, but a mere intimation of the passing of a resolution to that effect, which might have been rescinded, to dismiss that Gentleman from the Council with every mark of contumely and disgrace.

tranquillity has been re-established in the Madras Settlement, confidence has not been restored between the Governors and the governed; and equally notorious, that the present Government is so exceedingly unpopular, that measures even of a conciliatory and healing nature will in its hands be deprived of all their grace, and lose the whole of their intended effect.

VIIthly. BECAUSE,—Although I am of opinion that Sir George Barlow has justly forfeited the confidence of his employers, I am still more decidedly convinced that, had his conduct been invariably such as to entitle his administration to the unqualified and unreserved approbation of the Court, he ought, considering the rooted bias in the public mind at Madras, both against his person and government, to be recalled on grounds of expediency; particularly as the measure of recall could not, after a lapse of two years from the suppression of the mutiny, be fairly imputed on our part to any dereliction of principle, or abandonment of our just rights.

Lastly. BECAUSE,—Upon all grounds sustaining these reasons of dissent, I consider a change in the Government of Fort St. George as essential both to the prosperity and security of the British possessions in that part of India.

I have the honour to be,

Gentlemen,

Your very obedient Servant,

(Signed) ROB. THORNTON.

India House,
6th August, 1811.

East India House, Aug. 3, 1811.

*To the Honourable the COURT of DIRECTORS.

Gentlemen,

I dissent from the resolution of the Court of the 23d ultimo; by which was negatived the proposition then brought forward, declaring the expediency of a change in the Madras Government;

BECAUSE,—After having survived one of the greatest convulsions that ever endangered a State, by the suppression of the late unhappy revolt in the Madras army, I concur in the opinion of the Governor General, that “the next care is to prevent the return of “the evil,” and I know not how that care can be evinced, or its object secured, but by measures of healing policy, calculated to extinguish the animosities in which the evil originated, and to restore that harmony, union, and confidence, between all the branches of the public Service, which have so long been banished from the Coast of Coromandel.

BECAUSE,—Actuated solely by these views, and by a sense of the danger inseparable from such a state of things, I consider the committing the reins of the Madras Government to hands disconnected with the late convulsion, as a measure dictated by public expediency, and having reference only to its *effects*, in the almost universal feeling and temper, which there is too much reason to believe pervade the public mind towards the existing administration.

BECAUSE,—In the propositions which have been rejected by the Court, no allusion is made to the measures which led to the revolt, nor any censure either expressed or implied on the conduct of Sir

* The reader's attention is particularly directed to this and the following protest of Mr. Bannerman. The latter is a luminous and powerful production, and almost sufficient to redeem the Directors from the general contempt and hatred in which, as a body, they are held, by those who do not know their characters as individuals.

George Barlow, to whose general merit, long services, and the firmness which he displayed in that arduous crisis, I am ready to do every justice. As a general proposition it may be admitted, that the best evidence of a wise and just Government will be found in the respect and confidence with which it is surrounded ; but *these* do not invariably follow the most upright intentions: and I am aware, that every allowance should be made for the difficult situation in which Sir G. Barlow was placed ; nor do I mean to detract from the merit here ascribed to him, but merely to assign the considerations which influence my judgment on this momentous subject, when I state that if Sir G. Barlow has borne his triumph with moderation, and endeavoured to heal the wounds he had inflicted, and to conciliate his fallen adversaries, there is but too much reason to believe that he has not succeeded. The territory, which has been justly described as the key of our Indian empire, is represented as still a prey to intestine divisions ; the Government obnoxious alike to the Civil and Military servants ; the Army, once the pride of our Service, and the cradle of its most illustrious Officers, conscious of its past reputation, ascribing its recent crime and consequent abasement to the intolerable severity and oppressive acts of Sir G. Barlow ; the latter charging them to the mutinous spirit of the Officers ; each criminating the other ; and our inveterate Foreign Enemy and the Native States contemplating the unnatural strife, with the hope, that, by shaking the foundations of our power, it may enable them finally to effect its subversion. Such is the gloomy picture* which Madras at this moment pre-

* Nothing more is wanting to heighten this gloomy picture, but to state, that social life is rendered unquiet and insecure by spies and informers. A dark and sullen cloud hangs over the whole Settlement, far remote from tranquillity, and more dangerous than actual insurrection ; the stillness of despair.

sents ; and, under such circumstances, there can be no hope that the Army can ever be reconciled to *him* whom it considers to be the author of its humiliation, or that they can be brought to view each other again with cordiality or respect. In the breast of each the sense of injury must be too deep to be eradicated. The victor cannot cease to remember the perilous extremity to which he was compelled to resort : and the vanquished party will pine under a sceptre which it contemplates only as the weapon of triumphant tyranny.

BECAUSE,—Therefore, it is in vain to expect, while the authority continues vested in Sir G. Barlow, that the Madras Army can lift its head again to that cheerful discharge of its duty, on which equally depend the recovery of its former reputation, and the security of the interests it is destined to protect ; for I need not point out how wide is the distinction between a forced obedience mixed with discontent and hatred, and that obedience in which the heart participates, and which is given not less from inclination than from principle. The Court of Directors, and especially those Members of it who have served in India, will easily call to their recollection, periods when the utmost efforts that could have resulted from a merely constrained sense of duty would have been unavailing, when the united efforts of every heart and hand, and above all in the army, the most ardent and heroic spirit of enterprize, with a cheerful submission to hardships and privations of every sort, were necessary to enable us to meet the difficulties which assailed the Company on every side. No one can say that we shall not again have similar exigencies to encounter, or that similar exertions will not again be required.

BECAUSE,—Therefore, it seemed to my judgment, that every motive of just policy and every considera-

tion connected with the important interests entrusted to our care, called upon the Court of Directors to extinguish those embers of discontent which are still glowing, and to terminate the animosities which still prevail in every part of the Madras Establishment, and which never can cease while their exciting causes remain; and I concurred in recommending a change in the Government, by the recall of Sir G. Barlow, as the only measure that promised to be effectual for these important purposes; other healing measures may also be advisable, but this only will apply to the root of the existing evils. I am aware that it may possibly be objected to this measure, that it would afford a triumph to the Army, but I can see in the objection no real validity. It might, indeed, be sufficient to urge in answer to it, that the question to be decided is, not whether the Army or the Government shall triumph, but whether dangers which threaten our safety in India shall be removed; but we have, in truth, perhaps, too abundantly guarded against the Army's ascribing any change in the Government to a diminished sense of their misconduct. The Court's dispatch of the 1st May, 1810, (which was published to the Army in General Orders) is an effectual security against any apprehension of that kind. In that dispatch, no terms of eulogy are left unapplied to the conduct of Sir G. Barlow in the suppression of the revolt; and the rejected proposition expresses no censure of the measures which led to it. In reality, whatever may have been the merit or demerit of those measures, whether they were, as I have no doubt Sir G. Barlow believed them to be, necessary for the due vindication and support of the authority of Government, or were, as considered by the Officers, unnecessary and oppressive outrages on every recognized principle of justice, and on those feelings which constitute the best pride and orna-

ment of the soldier's character. The question, though of extreme importance to Sir G. Barlow, cannot, whatever may be the decision upon it, affect the broad principle on which I rely, namely, that where *the Governor of a distant dependency, comprehending one of the most valuable and important limbs of a great Empire, has, from any cause whatever, become so unpopular as to excite not only a general odium against his Government, but open rebellion against his authority, he is no longer in a capacity to fulfil the ends of his trust, and a great public expediency demands his recall.* If he had even incurred the odium only by the pursuit of right measures, the principle would remain the same; the lesser would be absorbed in the greater interest; though in that case a just indemnification would be awarded, and the recall expressed in terms that would prevent its inflicting any painful sensation.

Such is the sincere result of the best consideration I have been able to give to this momentous question, which I have weighed dispassionately, and with neither the feelings nor the views of party spirit: I disclaim any wish to palliate the dreadful excesses of the Army; and those who most differ from my opinions, cannot more sincerely condemn Military combinations for any purpose or any object, however justifiable in itself if sought by proper means: but I cannot forget that this Army, however veiled by its present cloud, had, (as most truly stated by the Governor General) "to the hour of the mutiny, been invariably distinguished by a long and uniform display of every Military virtue;" that it has hitherto faithfully preserved to us our invaluable possessions, and that we still must look to it for their further security and defence. The safety of the Carnatic, (the central support of our Empire in the

East) depends on restoring it to its former state of content, confidence and discipline, and removing the schism and estrangement which now separate it from the Civil Government. These desirable ends cannot be accomplished by a Governor, whose administration is held in universal dislike by all descriptions of persons dependent on his authority, and I should therefore feel the deepest conviction of the impolicy of continuing Sir George Barlow in the Government of Madras, even if all his measures had been wise and just; an inference certainly not sanctioned by some of the decisions and expressed opinions of the Court, and I believe hardly contended for by the most partial of his friends. But I view with equal apprehension the danger which his continuance in the Government threatens to the safety of the Company's possessions on the Coast, by weakening all the securities of their defence, and by the hopes of renewed convulsion, which it cannot fail to excite in the minds of our active and inveterate European Enemy, and of the Native States, who are watching for an opportunity to regain their former power and influence.

On these accumulated grounds, I desire to record my dissent from a Resolution, which, by continuing Sir G. Barlow in the Government of Madras, involves the continuance for an indefinite period of evils, the termination of which, after the suppression of the revolt, was an object that, in my opinion, could not too soon have occupied the attention of the Court.

(Signed) J. HUDLESTON.

To the Honourable the COURT of DIRECTORS of
the EAST INDIA COMPANY.

Gentlemen,

I feel called upon as an act of public duty, to record the reasons and arguments I have made use of, in support of the Motion of the Honourable William Elphinstone, on the 23d instant, and at the same time beg this may be considered as my solemn Protest against continuing, in effect, the present commission of Government at the Presidency at Fort St. George.

The lengthened discussions which have arisen out of the several branches of this question, have made it my duty to record my opinions on most of the points connected with it.

I shall, therefore, endeavour to compress into as small a compass as is practicable, the general grounds on which my support has been given to the Motion.

At a very early stage of these discussions, I stated my opinion, that the first fit opportunity ought to be embraced for establishing at Fort St. George, an efficient, respectable, and respected Government; and my judgment is convinced, that a fit period has now arrived. I was restrained at an earlier time, from proposing the removal of a Government notoriously deficient in the qualities which I have named, because the unfortunate course of public events might have given to the precipitate adoption of that measure, the appearance of yielding to the clamours of an insurgent body. That insurrection has been long and finally suppressed, the persons "*intended for punishment*" have been brought to trial, and the law has taken and completed its course.

Partial discontent may arise from unfounded prejudice, and may be directed against an individual who really deserves popularity. *General* discontent

has seldom originated in imaginary causes; and exclusively of the abstract merits of the question, no wise and benevolent Government has ever hesitated to remove a Governor notoriously unacceptable to the great body of those who are subject to his authority. The most strenuous advocates of Sir George Barlow will scarcely deny, that he is generally unacceptable to the British subjects, Civil as well as Military, who are placed under his Government; and those who examine impartially, and declare truly, will find the exceptions so few, and those few created by motives which operate so powerfully, however unworthily, on human conduct, that they will see little to qualify the more absolute proposition, that the discontent was not only general, but universal. On these grounds alone, I should feel it to be my duty to urge the recall of Sir George Barlow; but that duty must become imperative when it is ascertained, that the discontent is not only universal, but that it has arisen from causes more than abundantly adequate to the production of that unhappy effect.

Among the Civil servants as among the Military, one of the first sources of discontent and unpopularity (as is stated by Sir George Barlow in his minute of the 21st August, 1809) against the Government, was its conduct with reference to the prosecutions in the Supreme Court, connected with the subject of the forged Nabob's bonds.

In the investigation of the Carnatic debts, the individuals who had real claims were anxious, in defence of their property, to discredit the immense mass in circulation which were notoriously fictitious. Of those forged securities, one of the Members of Government, and both of the Company's Law Officers and Advisers, were the known proprietors. The chief forger of these bonds, (Reddy Row) was recommended as the official assistant of the Commis-

sioners who were to investigate their validity; and one of the proprietors of forged bonds, (Mr. Anstruther, the Advocate General) was appointed President of a Committee, to inquire whether his own bonds were forged. When the forger was convicted by the verdict of a Jury, a Civil servant was sent express to a distant province, to garble evidence for the purpose of discrediting the verdict; the Company's Law Officers were instructed to defend the forger, and were ordered to continue their efforts in opposition to the solemn verdicts of three Juries, two of them specially formed from the most respectable of the Civil servants. A Magistrate, (Mr. Maitland) who, in the ordinary course of his duty, had been accessory to this triumph of justice, was dismissed without inquiry; one of the agents of the real creditors was ordered from the country to the ruin of his private affairs; another, (although on finding his exertions gave offence to Government, he meekly withdrew from the agency) was ignominiously deprived of all his offices, and banished to a distant Settlement; and, finally, the very Jurors who had given a verdict conformable to the dictates of reason and conscience, but who, in the phraseology of parallel times, "were suspected of being suspicious," were driven from the Presidency for the purpose of breaking up, what a shameless but triumphant cabal have dared to stigmatise as an improper combination. These are strange facts, but they are no longer disputable; the hand of Providence would almost seem to have been abroad to complete the triumph of law over depotism; the facts have become too notorious for denial, and too plain for subterfuge, and the Company's Law Officers have been compelled to admit the forgeries which they defended, and to acknowledge the error into which they were *innocently and inadvertently* led.

The Forger, unable to stem the force of truth, rushed in despair into that tribunal where the pleading of despots has no avail. I will not detain the Court by tracing the history of the sufferings of each, and will only observe with regard to the case of Mr. Roebuck, that Sir George Barlow seems desirous to acquit himself of the charge of the *murder* of that unfortunate gentleman. I do not accuse him of that crime, because the intention to kill is one of its ingredients, and I have no reason to attribute this intention to Sir George Barlow; but whatever may have been his intention, there can be little doubt but his acts were the cause of Mr. Roebuck's death.

Whatever may have been Sir George Barlow's knowledge of the state of facts, always obvious to the majority of the community, always considered disgraceful, and now no longer disputable, it was, under the best construction of his opinions, his most sacred duty to have suppressed them; and most assuredly it never will be tolerated by a British public, that any Governor, under any circumstances, himself possessing no judicial authority, shall extend the arm of terror to subvert the regular course of justice; shall, instead of abstaining with reverence from all interference with proceedings, which are polluted by the touch of power, pervert that power to the maintenance of forgery and perjury; shall vilify the solemn verdict of British Juries, punish the Jurors, dismiss Magistrates, and becoming a party in the cause of iniquity, send away the unoffending assertors of their private rights, to poverty, to banishment, and to death. I only require, that we should not tolerate in Sir George Barlow, what the people of England most certainly would not tolerate in any man or set of men, administering even the Government of this country.

In adverting to Military transactions, I shall endeavour to be as brief as possible.

Two facts have been assumed with infinite ease and unblushing confidence in the dispatches from Madras; viz. 1st. That *treasonable* designs were known and *proven* to exist before the 1st May, 1809, or the transactions noticed in the order of that date; and, 2d. That the Army had no grievances. The latter proposition is very abundantly disproved by the facts which they themselves avow; and with regard to the former, it will naturally occur to the Public to ask, why is not all clamour and cavil silenced at once by producing those *proofs* of seditious objects and intentions; the Public will conclude, and Sir George *knows*, that he had no such *proofs*. Subsequently, without doubt, there was abundant guilt and more abundant folly; but at no time any fixed design of subverting the authority of the State; the folly and madness of the day was an attempt to separate the authority of the State from the person empowered to exercise that authority; but Sir George Barlow well *knows*, that if treasonable designs had at any time existed, he would not now be uttering calumnies from the seat of power; he knows that even so late as the 26th July, Officers, meditating treason, would not have become the willing dupes of a shallow artifice, by peaceably retiring to the places appointed for their residence; many of them for want of any European to take charge, delivering over their commands in due form to the astonished Native Officers. Will it be contended, that because from time immemorial some few examples of discontent, whether with or without cause, did really exist, that said discontent was actually expressed by one, two, or three Military persons at different times, and therefore that the whole Army was, and of course always had been, in a state of sedition? To all these assertions and argu-

ments I will oppose the direct evidence of Sir George Barlow and Lord Minto; the former in his General Order of the 1st of May, 1809, refers all the unjustifiable proceedings of the Army to a date posterior to the departure of General Macdowall; and Lord Minto, in his General Order of the 20th of July, 1809, says, "have hitherto been the theme of just and unqualified applause;" and in his General Order of the 25th of September, 1809, says, "which a long and uniform display of every military virtue had, till this calamitous season, so well justified."

Representations, whether justifiable or otherwise, were however meditated and known to Sir G. Barlow for some time previous to the departure of General Macdowall; but with the exception of what relates to the complaint against Colonel Munro, there was not one subject of grievance less earnestly pressed by His Majesty's Officers than those of the Company; but although the signatures of the former were by due management withdrawn, the feeling remained; and at a comparatively late period, it became the subject of formal apology to withdraw the signatures of a regiment which had subscribed for the support of Major Boles. Highly as I respect and honour those Officers individually and collectively, I will not suppress the remark, that their feeling for Major Boles was pure compassion and no more;—that there was strictly speaking no sympathy, no sense of common suffering, no common dread of the oppression which Major Boles had suffered; because Sir G. Barlow was destitute of the power to suspend, or in any manner to punish any one of that body without a legal trial; he did suspend General Macdowall from the office of Commander in Chief of the Company's forces; he could not suspend an Ensign from his right to carry His Majesty's colours. Whatever were the treasons and seditions of the Company's Officers, before the

1st of May 1809, they were shared by His Majesty's Officers, who have certainly merited all the praise which they have subsequently received. Among these treasons was an intended memorial, praying for equal allowances with their brother Officers in Bengal; a prayer which, with sorrow and shame, I have seen pronounced incompatible with reason and justice. Among those exclusively attributed to the Company's Army, was an insane production, purporting to be the draft of a memorial to Lord Minto, praying, among other things, for the removal of Sir G. Barlow. It is avowed by both those persons, that this memorial was never signed or presented, and it is even acknowledged that the intention of presenting it had been abandoned; yet this nonentity has been made the ground for which punishment was inflicted on the greater part of the victims of the 1st of May 1809. It has been asserted with the same easy confidence which distinguishes the productions of Sir G. Barlow and Lord Minto (for the identity is truly marvellous) that the abolition of the Tent allowance was the cause of the mutiny. Now, in the General Order of the 1st of May, it is very remarkable, that not one allusion, direct or remote, is made to that transaction, not one of the crimes fabricated by that mass of gratuitous assertion, is ascribed to that cause, or to any event arising out of it. The Tent Contract had long been sent to oblivion; but these posthumous recollections are exceedingly convenient, and have been most abundantly employed where the original assertion has proved to be *the thing which is not*..

I will no further detain the Court on the subject of the accusations of the Officers commanding Native corps against the Quartermaster General, than to notice, that Sir G. Barlow did suppress, and Lord Minto

countenance the suppression of their memorial to this Court, who have recognized the fact in their dispatch of the 15th of September 1809. It is in the natural order of cause and effect, that the authors of injustice should seek to prevent appeal; this tendency pervades the whole of these proceedings, and has been brought into distinct operation in this case and that of Colonel R. Bell, who was punished for appealing.

I am not the advocate of the inflammatory proceedings of General Macdowall, of whom, however, it is not too much to say, that an ordinary and decent degree of courtesy from Sir George Barlow would have secured his cordial co-operation. If he had lived to plead his own cause, his memory would probably have been relieved from a large portion of the obloquy which at present attaches to it; and two facts which the Government of Fort St. George have found it inconvenient to notice, seem to justify the conjecture, that better information would have given a better aspect to his conduct. 1st. It has been lately discovered, that the *direct* appeal, for which the Quartermaster General was reprimanded, was not that appeal through the Commander in Chief, but a previous appeal *not* through the Commander in Chief; a proceeding which the slightest professional knowledge will shew to be subversive of the first principles and rules of military subordination, and which no Commander in Chief could tolerate consistently with his public duty. And, 2dly, That General Macdowall, so far from being influenced by seditious motives to make the Officers umpires in a case they had prejudged, did, in his letter to his successor, distinctly guard him against allowing any Officer of a Native corps to be a member of the Court Martial for the trial of Colonel Munro, and, with a zeal for fair trial, which has every character of sincerity, recommended

that the Court should be chiefly composed of His Majesty's Officers, as stated in the following extract :

“ Lieutenant Colonel Munro, Quartermaster General of the Army, having had charges preferred against him by the greater number of the Officers in command of the Battalions, I was, under a conviction of the necessity of the case, induced to place him under an arrest, that he may be brought to trial under your authority. After much reflection, I deemed this the most eligible course to pursue, as relieving you from much embarrassment, preventing the interference of undue influence, and not only giving Lieutenant Colonel Munro an opportunity for justification, but if he is acquitted, of bringing his accusers before a General Court Martial. As the Officers of the Native Army have in some degree prejudged the cause, it may be improper that any of them should sit on Lieutenant Colonel Munro's trial, but a competent and impartial Court will readily be assembled from the King's troops, the Company's corps of artillery and engineers, and perhaps the Madras European regiment. This, of course, will be left to your own judgment; but as I am clearly of opinion that the Quartermaster General should be tried, I trust you will support this sentiment against every illegitimate interference. The vindication of the character of the principal Officers of the Army from expressions which they consider false and unfounded, I now place with a man of honourable principles and matured judgment; they will not be disappointed in their expectations.”

(Signed)

Madras,
23d Jan. 1802.

“ HAY MACDOWALL.”

I put it to the cool reflection of every member of the Court, whether, under the notorious state of the relation between the late Commander in Chief, General Gowdie and Sir George Barlow, the existence of this letter was known to the latter, and whether a feeling for the reputation of a person unable to defend himself, or what other feeling, has hitherto kept it in concealment. It is quite unnecessary to combat the argument so much insisted on — *“That if Colonel Munro was blameable, his conduct was a fit subject of investigation by his superiors, and not by the Officers of the Army,”* because the argument proves infinitely too much for the cause of Sir George Barlow, who, when the Officers had abandoned their demand of military trial, actually suppressed the memorial which they addressed to their superiors in consequence.

It is far removed from the object of the preceding remarks, to defend any portion of the seditious conduct of the Officers at a subsequent period. Their sole object has, I trust, been incontrovertibly attained; and this object consists in the direct proof of a proposition broadly affirmed by Sir George Barlow himself at one time, and with happy versatility and effrontery denied at another; namely, that whatever might have been the prior discontents, all the unjustifiable proceedings of the Army had a date posterior to the departure of General Macdowall, or, in other words, to his own wanton punishment of Major Boles, which, in characters so plain, that he who runs may read, was the sole and undivided origin of the mutiny. The General Order, dated 31st of January, 1809, by which that punishment was inflicted, has received the just reprobation of this Court in its Military letter to Fort St. George, dated 22d of February, 1811.

It has already been shewn, that the draft of a memorial, which as a memorial never had existence, and which Sir George Barlow knew to be abandoned, was skilfully pressed into the service, when the Army was known to be agitated by an injury to which he dreaded to attribute its true effects; but it was a most unworthy and flimsy subterfuge, thus to conjure up the ghost of a nonentity to exhibit a gaudy stage trick, for the purpose of drawing off the attention of his superiors and the public from the sole and undivided cause which then inflamed the minds of the Officers, namely, *punishment and degradation without cause or pretext, or trial, or inquiry*. If, indeed, it be the privilege of a Military man to be exempt from human feelings, to have no sympathy with sufferings directly impending over his own head, to bear wrongs as well as hardships without a murmur, to be the *only* Christian of whom it shall be literally required to bless his enemies, and to pray for those that despitefully entreat him, then are the murmurs without palliation which agitated the minds of those unfortunate men from the 31st of January to the 1st of May 1809.

The events of that day changed the aspect of their cause; they burst the bounds of reason, and from the wantonly injured and deeply offended, became the offending party.

Of subsequent measures I have already taken some cursory notice, and shall only stop to observe, that under the acknowledged weakness of human reason, it is deemed prudent to estimate the wisdom of human measures by their efficacy in promoting their professed objects. Of the efficacy of Sir George Barlow's measures, he has himself most distinctly, but unwittingly, furnished us with ample testimony; in an eulogy published to the Army, on what (with an irony somewhat too keen) he is pleased to call *his*

own moderation, he exhausts the language of lamentation in avowing, that every one of his measures had produced effects exactly the reverse of those he had foreseen and intended.

The measure of the Test, adopted on the 26th of July 1809, is one, the consequences of which may be too important to speak of it lightly; it broke asunder the bond by which the Native Soldier and European Officer were united; it destroyed the harmony between the King's and Company's Services; it dissolved the chain by which a handful of Europeans have, hitherto, governed millions of Natives; it humbled the high spirit of that Army which gained and preserved our power in the East against the united efforts of the Native powers and France. These consequences have already resulted from the infatuated conduct of Sir George Barlow.

I have, on a former occasion, found it my duty to allude to the endless persecutions and publications to the Army, year after year, of interminable reproaches; and the recent dispatches from India, afford some memorable illustrations of the treason and disaffection imputed to individuals in the early stages of these events. The individual who was sent to disease and solitude, and afterwards on a distant service, professedly intended as an exile, as the punishment of an innocent and convivial toast, "*The friends of the Army*," has answered the accusation of treason on the hills of Amboyna, and finally strangled the foul calumny on the ramparts of Ternate, by an achievement which will live when the puny malice of Sir G. Barlow shall have ceased to be important.

The mutiny has been suppressed; but let it never be forgotten, that not one man surrendered to Sir George Barlow, but all, and unconditionally, to Lord Minto, in consequence of his public profession of conciliation and inquiry.

The career of Sir George Barlow's Government commenced with punishment without trial or inquiry, or reason or consideration; the error was discovered when too late. It was in contemplation to restore an innocent man, on the condition of his pleading guilty; he refused to be accessory to his own infamy, and there was not sufficient magnanimity to retract a blind, outrageous, and precipitate error; false measures were necessary for the support of false principles. Crimes did not exist; it was therefore necessary to *create* crimes for the purpose of obscuring the true origin of the question at issue, when, in pursuance of this system, men had been goaded past forbearance by a succession of punishment without trial, to the actual commission of crimes; then, indeed, it was ostentatiously announced, that trial by Court Martial should be restored: but when the sentence of that Court Martial was pronounced, then this most consistent Government bring up their corps de reserve, revert to their first principle of condemnation, (whether without trial or contrary to trial is indifferent to such principles) and pronounce the suspension of Colonel Doveton, for a crime, of which he had been most honourably acquitted by the sentence of a Court Martial.

There are many other circumstances, disgusting indeed to mention, but which tend to shew the unsuitness of Sir George Barlow for his present situation. — On one occasion, a whole body of young Officers, sent from the Military Institution at Madras, and ordered to join their corps, because they declined holding any intercourse with a young man who had accepted an invitation to the Government House. On another occasion, the Commander in Chief was obliged to exert his personal influence with the Officers of one of His Majesty's regiments to induce them to dine with Sir George Barlow, who was for

unpopular that they refused to accept his invitation. The Officers of a Native corps having declined an invitation, although it was accepted by the Commandant, the Sepoys were punished as well as the Officers, by the battalion being sent to a station 500 miles distant, and particularly unhealthy. Another Native corps was sent from Madras, because Major Boles, after his suspension, had dined at the regimental mess.

Officers, although suspended by an arbitrary act of Sir George Barlow, although censured by him in public orders, surely were not to be branded with infamy, and held up as unworthy to be received into private Society : and yet we find Sir G. Barlow actually expressing a wish that the Officers who had fallen under his displeasure, should not be invited to the houses of the members of Council.

The unusual severity shewn to the Hon. Lieutenant Colonel St. Leger and Captain Marshall, affords further proof of the vindictive spirit by which Sir George Barlow seems to have been actuated throughout this unhappy period, and gives us too much reason to believe, that harmony and mutual confidence never can be restored under his Administration.

To the multiplied causes for the recall of Sir George Barlow, of which only the most prominent have been noticed, I will add his unauthorised dismissal of Mr. Petrie before he had received the new commission of Government, or possessed any legal authority for violating not only the existing commission of Government, but a separate commission, held by Mr. Petrie, to succeed to the office of Governor in case of the death or absence of Sir George Barlow. The legality of this measure may be estimated by supposing an ordinary event, namely, the death of Sir George Barlow, after the dismissal of

A LETTER, &c.

A LETTER

SIGNED BY

C. GRANT, Esq.

W. ASTELL, Esq.

C. MILLS, Esq.

A. ROBARTS, Esq.

G. SMITH, Esq.

R. C. PLOWDEN, Esq.

C. MARJORIBANKS, Esq.

J. INGLIS, Esq.

J. BEBB, Esq.

G. A. ROBINSON, Esq.

DIRECTORS OF THE EAST-INDIA COMPANY;

CONTAINING

A MINUTE EXAMINATION AND FULL VINDICATION

OF THE

MEASURES

ADOPTED BY

SIR GEORGE BARLOW,

DURING THE

Dissentions

AT THE

PRESIDENCY OF MADRAS.

Extracted from the Papers laid before Parliament.

LONDON:

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EAST-INDIA COMPANY, LEADENHALL STREET

1812.

Mr. Petrie, and before the arrival of the new commission of Government.

It will hardly be contested, that in such contingency, Mr. Petrie must necessarily have assumed the Government of Fort St. George; and if so, his removal was unlawful, and all the acts of the remaining members void. If there should be any doubt of the illegality of this act, assuredly there can be none of its indecency, as the miserable triumph of a little and illiberal mind, over a man whom he had injured past forgiveness.

I will conclude a catalogue, which might still be much prolonged, by adding his disobedience and disregard of the intentions of this Court, officially announced, in the case of Colonel (now General) Agnew.

I have the honour to be,

With great respect,

Gentlemen,

Your obedient Servant,

(Signed) J. BANNERMAN.

India House, August 6, 1811.

The above is a rapid outline of the tyranny of Sir George B. 's Government, solemnly recorded by one of the body, to whom the Government of India is committed. But the details are still wanting. The Public must have them, and they will shortly be published. They are calculated to make human nature hang down its head in sorrow and shame.

W. THORNE, RED LION COURT, FLEET STREET.

PREFACE.

AN Honorable Member of the House of Commons (Mr. Creevy) lately announced his intention of bringing forward a motion for the recal of Sir George Barlow from the Government of Madras. The motion was to have taken place on the 2d of June, but has been since postponed, *sine die*. Whatever may have been the Honorable Member's motive for suspending or for relinquishing his intention, the circumstance is to be regretted, as Parliamentary discussion would have given the best opportunity of informing the public mind on many points connected with the dissensions at the Presidency of Madras, and have freed it from the delusion which has too long existed. The papers relative to that subject have been now long on the table of the House of Commons ; and it is probable

that the Honorable Member may have become sensible of the untenable grounds on which any motion of the nature proposed would have rested.

Some dissents, recorded by six Honorable Directors, relative to the proceedings at Madras, have recently been extracted from the Parliamentary papers, and brought to the public attention in the form of a separate pamphlet. We shall offer no observation on those dissents; but request the reader to peruse the following unanswered and unanswerable letter, subscribed by ten Directors of the first respectability and distinction, as that letter contains the most ample vindication of all the material measures adopted by the Government of Madras—a vindication which, being founded on the demonstration of proof, can never be shaken.

It would have been satisfactory that the ~~subject~~ should have had the benefit of public discussion in Parliament; but as it seems now questionable if such discussion will take place, those who may be desirous of looking further into the question,
may

may be enabled to compare the opinions stated in the dissents, with those stated in the letter which follows, and to draw their own conclusions as to the side of truth.

The low scurrility interspersed in different parts of the recent pamphlet, is such as can require no observation.

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TO THE

HONOURABLE THE COURT OF DIRECTORS.

GENTLEMEN,

THE late Revolt of the Officers of the Madras Army, is the most remarkable and most important event, that has occurred in the history of British Administration in India, since our first acquisition of territory there. It led to the commencement of a Civil War in the Carnatic; it threatened to involve the whole Peninsula in anarchy and blood; to encourage the numerous disaffected adherents of the fallen families of Tippoo and Mahomed Ali to insurrection, to invite the Native Powers to fall upon us whilst in this state of internal convulsion, and to subvert a Government which had successfully resisted, through a long course of years, the repeated attacks of neighbouring States. This intestine war did not proceed from the natives displaced by our power, or employed in our service. It proceeded from our own people, from British-born subjects, from military men to whom the command of the Army, the defence of our Government, was committed, and who, by their profession, and the solemn obligations it imposed on them, were bound to fidelity and obedience. So signal an event ought to leave a profound impression upon the minds of all those to whom the administration of British India is entrusted; and the causes which led to it ought, with a view to future good, to be well understood and established, to be, where any doubt or dispute still remains, investigated with the utmost care and impartiality.

Preliminary observations on the late Revolt at Madras.

To mistake the causes, to suppose the revolt to have been occasioned by what did not produce it, and to overlook circumstances which really had a material effect in bringing on that unnatural proceeding, would have a fatal influence upon our determinations respecting the merits of the actors in the recent transactions, and the policy which ought to be observed in future. Condemnation might thus be pronounced on those who are entitled to the highest praise, and encouragement, instead of resistance, be given to the dangerous spirit of insubordination.

We conceived indeed, that the task of passing a final judgment upon the conduct both of the Government of Madras, and of the Officers of the Army in the late extraordinary commotions, had been performed in the several dispatches sent by the Court upon those subjects to the Presidency of Fort St. George, under dates the 17th August, 29th September, 12th October 1809, and 7th February 1810; and we lament to see the opinions which so long afterwards have been given to the Court, and through them to the public, upon these momentous topics, on occasion, not of any original direct question then brought forward concerning those topics, but of a question concerning an individual. The opposition made at the periods of those dispatches to the sentiments they contained relative to the conduct of the Army, and of the Government towards it, proceeded, to the best of our recollection, only from a few gentlemen, and had reference chiefly to the suspension of certain Military officers; Mr. Elphinstone alone having recorded a Dissent on 13th October 1809, to the approbation generally bestowed by the Court on the measures of the Government then in question. Afterwards certain proceedings of the Court itself, with respect to those Officers, drew from Messrs. Elphinstone, Hudleston, Pattison, and Bannerman severally, Dissents, in which, indeed, there were some strictures upon the character and proceedings of the Governor Sir G. Barlow; but in the Dissents which have been entered by those four gentlemen respectively, and by Sir Francis Baring and Sir Hugh Inglis jointly, on occasion of the removal of Mr. Petrie from the Council of Fort St. George, the whole question of the causes of the discontents in

*the Dissents to
the removal of
Mr. Petrie go,*

in the Madras Army, and of the conduct of the Government of that Presidency in relation to them, is again opened and discussed, and a judgment passed upon it very different from that which the Court has pronounced. We feel ourselves, therefore, called upon to go into this question anew ; and though we shall proceed to it certainly with unabated conviction of the soundness of the conclusions we have formed, and consequently with a just disposition to defend them, yet also with a full purpose of reviewing and stating fairly the facts and arguments from which those conclusions have been deduced, and of examining in the same spirit, the opinions delivered in the Dissents above mentioned. It was our declared wish to do this soon after the production of those Dissents ; but successive interruptions occasioned unintentional delay, which, however, does not affect the question, nor, we hope, the public interest. In the performance of the task we have proposed, we shall be led to unfold the grounds on which, when it became unavoidable to determine on a new commission of Government for Fort St. George, we deemed it our indispensable duty to vote for omitting the name of Mr. Petrie in that commission ; because we agree with the authors of those Dissents, in viewing the question concerning the merit or demerit of the Madras Government in its policy and conduct respecting the Army, as intimately connected with the question of the merit or demerit of Mr. Petrie in the opinions he professed, and the part he acted with relation to the same most important objects ; though there is still another question distinct from these :—whether Mr. Petrie, upon his own principles, acted rightly ?

with reference to that measure, into the whole subject of the disputes between the Government and the Army of Fort St. George.

Intended review of that subject here.

In the agitations produced by civil discord, when numbers are involved, when personal and party interests are at stake, and as a natural consequence, violent inflammatory representations are from many quarters made to the public, it must be more difficult to pursue inquiry with a dispassionate and unbiassed mind. For those especially whose duty it is, as Directors, to perform the solemn office of Judge upon the conduct both of the Government of Madras, and of the Officers of the Army, in the late extraordinary commotions, one of our own body, Mr.

Different representations on the subject.

Elphinstone, in his Dissent of the 14th April 1810, has proposed a good rule ; “ That the Minutes and Consultations of “ Council are the only true and constitutional information that “ ought to come to the Government at home, and on which “ they ought to form their decision, all other being only “ *ex parte* evidence, which never should be implicitly believed “ or acted upon.” Presuming that the honourable gentleman did not mean by his proposition, the scope of which is, that decision should proceed only upon well authenticated facts, to exclude truth otherwise incontrovertibly established by public proof, we approve of the spirit of his rule, which is conformable to our own sentiments ; and it shall be our aim, in the whole course of this paper, to adhere to it still, under a deep impression of the imminent perils to which the Company and the Nation have recently been exposed, and the transcendent importance of guarding against such evils in the time to come.

Since the alarms excited by the progress of revolt, have been removed by the knowledge of its suppression, it has become the fashion of many persons, both in writings and discourse, greatly to overlook the guilt of the Officers in that most criminal and dangerous proceeding, as if the whole with respect to them were over, and to draw the attention chiefly to the conduct of the Madras Government, or rather of Sir George Barlow, the Governor, in order to fix upon him the blame of the evils which have happened. This is a question which may now be discussed with perfect safety too the generality of the Officers, since the amnesty of Lord Minto has exempted them from punishment, which he declares them to have deserved : but although the opposite parties in the late contests are thus very unequally placed, and the accusations against Sir G. Barlow, however expanded in this country, originate chiefly with those Officers, it is our wish, that when they are adopted or supported by the written opinions of Members of this Court, that they may also undergo an examination in writing ; and this will be most properly done by following the important inquiry already proposed, into the *causes* which produced the revolt of the Officers of the Coast Army.

Those who look no further for the springs of this event, than to the occurrences which immediately preceded it, reason contrary to general experience, which has established the maxim, " that no one becomes all at once deeply criminal." The revolt was not a mere paroxysm of resentment into which men were suddenly hurried from a state of perfect subordination; it had in it characters of matured, systematic combination and pretension, which could only be the work of time: and the persons who thus argue, must also be unacquainted with the existence of authentic information, which militates against their hypothesis.

Inquiry into the causes of the Revolt.

The account of the first ostensible movements in opposition to the measures of Government, shows a temper of insubordination already formed; and it has long been our conviction, that the spirit and principles by which the sedition of the Officers was incited and impelled, had their origin in an early period, and that the causes of the revolt might justly be distinguished into such as were more remotely predisposing, and such as were proximate. Gallant as the conduct of our Eastern Armies has been in the Field, and fertile as they have been in men eminently fitted for civil and political as well as military employments, it is not unknown to persons well acquainted with India, that even before our force there became considerable, very many of the Officers, who lived chiefly in camps, separate from other society, indulged and provoked in each other a spirit of discontent, founded in invidious comparison between their own advantages and those of the civil branch of the service. The desire of rank and emolument, common probably to all Military Officers, has, in that country, from local circumstances, operated with peculiar force. It was not stimulated only by the idea of unequal allotments, and the powerful influence of a common sentiment, strengthened by free communication through the general mass of military society, but that society remained, from the principle of advancement only by seniority, composed of individuals who looked to pass a great part of their lives far distant from their native country, to which they naturally cherished a wish to return, with the provision of which.

Remoter causes.

which the adventurous spirit of youth had indulged the hope, and of which the scene before them seemed to afford the means.

The workings of this desire in the cases of individuals, and in questions of military allowances, may be traced through the whole course of the Company's records; and its ebullitions in the combination which produced the mutiny in 1766, and the agitations of 1796, were very formidable. It was, in our opinion, also a predisposing cause of the revolt of 1809, in co-operation, no doubt, with other causes of the same tendency, some of which may now be noticed. The infusion of the King's troops into the Indian service, which has happened within the last twenty years, seems, from the beginning, to have been a source of discontent to the Company's Officers, as interfering with honours and emoluments which they before exclusively enjoyed. It took place chiefly under the Madras Presidency; and as the number of those troops progressively increased there, and the Company's Officers thought, not always without reason, that partiality was shewn to those of the King, in the distribution of advantages, the privations to which they appeared to be thus subjected, became a permanent theme of complaint in the Madras Army—a complaint which the Company have done all in their power to remove, by enjoining the strictest justice in the distribution of places and emoluments: and their orders were actually, in a great measure, carried into execution at the time when the late disturbances broke out, although the charge of partiality still continued to be then repeated. With respect to the introduction of a large portion of the King's Army into India, our political circumstances in that country have required a considerable accession of European troops; and since the privilege of recruiting has been withdrawn from the Company, the supply could only be furnished from the public force. The Company's Armies have also been largely increased, and with their numbers the former feelings of injury have been extended and strengthened. Their brilliant achievements in the late wars, of which, and of the superlative praise bestowed on them by the Indian Governments, the Madras Army has had its full share, have naturally enhanced their sense of their own importance :

portance : and it will hardly be denied, after the decisive evidence furnished by the late revolt, that the Officers of the Madras Army (we wish always to be understood as meaning the majority only) fully believed they had the native troops entirely at their devotion. From this sentiment, which the implicit obedience of those troops had long tended to confirm, the Officers appear to have tacitly persuaded themselves that they had the power not only of overawing, but even of overturning, the Civil Government. We mean not to insinuate that they entertained such an intention, until the late excesses carried them at length to that fearful precipice : but the idea of their possessing such a power, must have had an habitual influence in exalting still more their estimate of their own importance, raising also their expectations, and aggravating their impatience under supposed wrongs. The example of the concessions obtained in 1796 is now proved to have had, as might have been expected, a great effect upon the minds of the Madras Officers.* The Indian Army may be allowed to have had at that time real causes of complaint, which were indeed very improperly urged, but too long unredressed. Since that period, however, the Bengal Army has been highly distinguished, as well by cordial obedience and attachment to legitimate authority, as by valour in the field ; and great praise is due, on the same score, to the Army of Bombay. The Military Regulations of 1796 extended their benefits to the three Presidencies, and with comparatively greater advantages to the two subordinate ones ; but the Officers of Fort St. George, when in the enjoyment of these, took encouragement from former concession, in framing new pretensions, such as had never before been heard of.

* General Macdowall's Letter to the Governor, of 16 May 1808, and the writings of the Officers in reference to this subject.

In forming such pretensions and pursuing them, they acted under the influence, and by the support of *combination*. It is the nature of this principle, when resorted to by an Army, to obtain concessions from the Government ; to place the former in some degree of opposition to the latter, and to weaken the sentiment of respect and subordination. Such combination is hardly known in the armies of Europe, and would be instantly put down on its first appearance. It has also been repeatedly forbidden .

forbidden in our Indian Armies, but the prohibition has not always been duly enforced abroad, as it might easily and successfully have been.

From this fact, connected with the other circumstances already mentioned, it might be inferred that the discipline of the Madras Army had become relaxed; but we are not left to uncertainty in this matter, and it is material to show, from authentic records, that a considerable time before Sir George Barlow's accession to the Government, (which was on the 24th Dec. 1807,) and before the commencement of the late retrenchments, there appeared among the Madras Officers, symptoms, more or less general, of a spirit of insubordination, which must indisputably be reckoned a predisposing cause, to future excesses. In the Fort St. George Military Letter of the 6th March 1807, we find the following passage.

“ Para. 429. We reported in our last letter, the proceedings which had taken place in consequence of an unfounded complaint from the Officer commanding the subsidiary force at Travancore, with regard to the inconveniences to which the Officers and troops of that force were described to be subjected by the discontinuance of the field allowances, the payment of which had been ordered to cease.”

“ 430. On full inquiry, the conduct of Lieutenant Colonel Grant, the Commanding Officer, appeared so reprehensible, from his having given his earnest support to representations which it had been established had no just foundation, that we considered it proper to express in General Orders our disapprobation of the mode of proceeding which that Officer had adopted, and in which he appeared to have shown himself not less forgetful of his duty to the Government, than of his own character.”

The Fort St. George Military Letter of 21st October 1807, contains a great deal on the same subject; and from it several extracts shall here be presented:

“ Para.

" Para. 467. We are concerned to state, that repeated instances of improper conduct on the part of Captain Boardman, of the 18th regiment of native infantry, in his communications with the Civil Magistrate at Chittoor, as will more fully appear on the records of the Judicial Department, have induced us to direct that he shall be removed from the command of that station, as we had in vain endeavoured to satisfy him of the necessity of regulating his conduct, in the exercise of his command, with more discretion and temper."

" 468. We have also been under the necessity of directing that Lieutenant Brown, of the 14th regiment native infantry, should be dismissed from the command of Onore, in consequence of his disrespectful conduct towards the Civil Magistrate of that place, whom he appears to have impeded in the execution of a useful work, without authority or any necessity."

" 469. We are concerned to bring to the notice of your honourable Court, a very unfavourable report of the state of the 8th regiment of native cavalry, which was submitted to us by the Commander in Chief at our Consultation of the 10th July. We entirely concurred with his excellency in the necessity of using effectual means to restore a due sense of subordination among the Officers of that corps. In pursuance of that opinion, we removed Lieutenant A. Macleod from the appointment of Quarter-master of the 8th regiment."

" 583. We feel considerable concern in soliciting the particular attention of your honourable Court, to a Memorial which has been addressed to the Supreme Government, by the Honourable Lieutenant Colonel Sentleger, an Officer belonging to the native cavalry of this establishment, and also to the Minutes which have been recorded by Lord William Bentinck, and by the Commander in Chief, in explanation of the grounds of complaint exhibited in that Memorial."

“ 584. It will be observed in those papers, that a Memorial was addressed to this Government; by the Honourable Lieutenant Colonel Sentleger, at a very early period after his late return to India, stating his pretensions to the appointment of Inspector of Cavalry on this establishment, in preference to those of Lieutenant Colonel Gillespie, who was selected for that station, from the opinion which was entertained of his qualifications for the performance of its duties, and as a recompence for the signal service rendered by that Officer to his country at the momentous crisis of the mutiny at Vellore. Without intending any disparagement to the Honourable Lieutenant Colonel Sentleger, it did not appear to us that his claims were sufficient to invalidate the circumstances under which Lieutenant Colonel Gillespie had, by an achievement of the highest importance, recommended himself to the public attention; and we were not prepared to yield to the improper, not to say indecent, precipitancy of Lieutenant Colonel Sentleger, who had then scarcely landed on his return from England, by depriving Lieutenant Colonel Gillespie of those honours which had been conferred upon him.”

“ 585. In the Memorial addressed to the Supreme Government, the Honourable Lieutenant Colonel Sentleger deemed himself at liberty to take a more extensive range of alleged grievance; and, after slightly adverting to the particular object which had formed the ground of his Memorial to this Government, *that Officer placed himself in the character of a defender of the general interests of the Company's Army, without any apparent authority from the Officers whose particular cause he pretended to support.*”

“ 587. We consider the agitation of such subjects to be attended with great delicacy, and we feel particular regret that they should at this moment have been forced upon our attention, or on that of the Supreme Government, as *there can be no mode more effectually calculated for the revival of the unhappy feuds by which this part of the British dominions was so long distracted and endangered.* As, however, the Honourable

“ honourable Lieutenant Colonel Sentleger judged it proper to
 “ appeal to the authority of the Supreme Government, we have
 “ thought it necessary, that the appeal should not be unaccom-
 “ panied by such documents, as would evince the fallacy of the
 “ grounds, on which that Officer had intruded himself on the
 “ public notice, as well as the dangerous tendency of the discus-
 “ sion which he had been eager to promote. With regard to the
 “ disrespectful and injurious terms, as affecting this Govern-
 “ ment, in which the appeal of Lieutenant Colonel Sentleger
 “ was conveyed, we informed the Governor General in Council,
 “ that we should offer no comment, being satisfied of the dis-
 “ position of His Lordship in Council to afford to our authority
 “ that degree of support which is necessary for the suppression
 “ of insult.”

“ 588. We shall only add, that though impressed with the
 “ strongest sense of the dangerous tendency of the inflammatory
 “ and factious proceedings pursued by the Honourable Lieutenant
 “ Colonel Sentleger, we have, for the present, adopted no fur-
 “ ther step than the measure of directing that Officer to leave
 “ the Presidency, and to join his regiment.”

“ 589. We are concerned to have occasion to draw your
 “ attention to a further circumstance, which though not of the
 “ same offensive nature as that which occurred in respect to
 “ Lieutenant Colonel Sentleger, was sufficient to call for our
 “ strong disapprobation. We allude to a very disrespectful
 “ application which was addressed to us by Lieutenant Colonel
 “ Alexander Cuppage, of the native infantry, stating his re-
 “ quest to be permitted to proceed to England, and assigning as
 “ his motive, certain supposed grievances which he considered
 “ himself to have suffered, and particularly the ‘ being turned
 “ out of the command of Nundydroog.’ ”

“ 593. The whole circumstances of Colonel A. Cuppage’s
 “ conduct having been fully explained in the Minutes of Lord
 “ William Bentinck and the Commander in Chief, to which we
 “ refer you, we considered the disrespectful tenor of his address

“ to be so unqualified and unprovoked, as to merit the expression of our strongest disapprobation. We accordingly recorded these sentiments, and decided against taking into consideration the application of Colonel Cuppage, for leave to proceed to Europe, until it should be submitted in more respectful terms.”

“ 731. We have already stated, that a very dangerous spirit of cabal has shewn itself among several Officers in your Army. This feeling has been greatly inflamed by the impunity with which the Honourable Lieutenant Colonel Sentleger has been hitherto enabled to brave and insult the authority of this Government: for it is with concern that we observe, in addition to the explanation which we have already given regarding the conduct of that Officer, that every means of the most public nature have been taken, at some of the principal military stations, to hold up Lieutenant Colonel Sentleger as the champion of the rights of the Company's Army, and as one whose example calls for general imitation.”

“ 732. We should think it necessary to apologize to your Honourable Court, for so particularly addressing you on a subject in itself obscure and unimportant, were we not strongly impressed with the necessity of discouraging, by every means, such factious proceedings as generally lead to consequences of dangerous extremity. This is a discussion in which we can have no personal interest, as the distinguished personages chiefly concerned in its origin, do not now form a part of our Councils; and we may claim the merit of sincerity in conveying to your Honourable Court our earnest opinion, that the conduct of Lieutenant Colonel Cuppage calls for your marked disapprobation, and that any encouragement of the groundless pretensions of that Officer, may be fatal to the discipline and interests of your Army.”

The information contained in the passages now quoted, is decisive as to the existence of a spirit of insubordination and cabal, and of the doctrine of the Rights of the Army, long before

before Sir G. Barlow was even known to be the intended successor to the Government of Madras; or the business of retrenchment came into operation. But what is deserving of peculiar attention is, that this letter was written in the short period in which Mr. Petrie was Governor, and signed by him. It is to be taken as his dispatch, and it establishes the insubordinate state of the Army till within two months of the accession of Sir G. Barlow. It is remarkable also, that Mr. Petrie intimates neither in that letter, nor in the consultations, any general measure to be in contemplation for repressing the dangerous temper of the Army; nor do the records, during the remainder of his short administration, give any indication of a favourable change in that temper. On the contrary, it is found, from the papers transmitted in the Secret Department, with Lord Minto's letter of 5th February 1810, which contain some very striking traits, that, as early as the month of July 1807, a proposal had been started among the Officers, to apply for Bengal allowances; and, in April 1808 at furthest, four months only after Sir G. Barlow's arrival at Madras, and *before the orders for the abolition of the Tent Contract were issued*, an Address to the Governor General was circulated in the Army, for signatures; the object of which was to solicit, that, with respect to allowances, "the military establishment of Fort St. George might be put on a similar footing to that of Bengal." These are the words of General Macdowall, in a letter to Sir G. Barlow, dated the 16th May 1808; from which it appears, that the *Army had recently agitated* the question, of the comparative state of the Bengal and the Coast allowances, and that the Address *had then been circulated*:—points which, on account of the great distance of various corps from each other, could not have been effected in a very short time. The same letter from General Macdowall contains other passages important and conclusive as to the present point of inquiry. "*It will demand*," says he, "*the most serious deliberation, to effectually check the spirit of remonstrance, which perhaps extends further than we are aware of*."—"My judgment and experience lead me to believe, that the seeds of discontent are very widely disseminated; and almost every individual in the service is more or less dissatisfied." The

first

first cause to which he ascribes this state of the army is, "the abolition of the Bazar fund;" which (without inquiring now whether he is right or not in assigning this as the first cause) certainly took place long before the time of Sir G. Barlow, and has not existed in Bengal since the Regulations of 1796. He says also, that the abrogation of the Tent Contract is one of the prominent causes of discontent.

The only thing we have been able to trace on the records, which seems not perfectly to accord with this representation, is a passage in Mr. Petrie's Minute, dated the 8th September 1809, in answer to Sir G. Barlow's. "When absent from the Presidency," says he, "in the month of June last year, I first heard of considerable discontents in the Army." From this it might be understood, that he knew of no discontents before that time; and hence that he meant to imply, they originated after Sir G. Barlow came to the Government. But the extracts already quoted, particularly paragraphs 587 and 731 of Mr. Petrie's public letter of 21st October 1807, the letter from General Macdowall to the Governor, and the combination of the Officers to obtain Bengal allowances, all militate against such a proposition.

It is therefore established, upon incontrovertible authority, the evidence of the Government of Madras, Mr. Petrie being then Governor, and of General Macdowall, Commander in Chief, not to refer again to other corroborating circumstances, that, before and at the accession of Sir G. Barlow to the Government, there existed in the Madras Army a dangerous spirit of insubordination and cabal, which, in a few months after that accession, "the seeds of discontent being then very widely disseminated," exerted itself openly; not at first in opposition to any measure adopted in his time, or to the retrenchments projected before his arrival, but to obtain an *augmentation*, or what the Officers conceived to be such; that is to say, the same allowances in all things as the Bengal Army received.

The opinion given by Lord Minto on this subject, in his letter,

ter, lately arrived, of the 5th February 1810, written from Madras after deliberate reflection, is too important, and of too high authority to be overlooked. "The discontents," says his Lordship, "of the Coast Army, have prevailed with so little interruption, and with so much continuity, beginning, for the sake of brevity, no higher than with General Stuart's command, and proceeding through that of Sir John Cradock to the *present hour*, that it is difficult to fix a distinct period for the events in which we are immediately concerned, or to separate the present from the past." It is, doubtless, very satisfactory to us, to find the views we have entertained upon this subject corroborated and improved by the convincing exposition which his Lordship's information respecting it has enabled him to give. But we must desire it to be distinctly understood, that the plan and substance of what the preceding pages contain, relating to the *remoter causes* of the discontents in the Madras Army, (even to the use of that expression) were determined upon long before the arrival of Lord Minto's letter, of which we had no expectation; and that the general coincidence, which appears between his sentiments and ours, arises from the separate reflections of each party.

The establishment of the existence of insubordination and discontent in the Madras Army, before and at the period of Sir G. Barlow's entrance on the Government, and the progress of those tempers for several months afterwards, not on the score of any thing he had done, but on grounds taken up long before his time, we deem to be a point of great importance, and we request particular attention to it.

Let us now turn to the account which some of the Dissent, before give us of this subject.

"When Mr. Petrie," says one,* "delivered over the Government to Sir G. Barlow, it cannot be denied, that he left him an Army not surpassed in discipline, obedience, submissions or in attachment to their country by any troops in the British service. During the former," (the Government of Mr. Petrie)

*The account given in the Dis-
sents of the state
of the army at
the time of Sir
G. Barlow's ac-
cession to the go-
vernment.*

* Dissent of Sir F.
Baring and Sir H.
Ingles, 24 April
1800.

† Dissent of Mr. Pattison, 24th April 1810.

‡ See Gen. Macdowall's Letter of 16 May 1808, which affirms just the contrary.

§ Mr. Elphinstone's Dissent, 15 October 1809.

Petrie) says another,† “ though the Tent Contract had been “ abolished under the previous Government of Lord W. Bentinck, of which Mr. Petrie was a Member”—(not *abolished*, only *PROPOSED* to be; the *actual* abolition did not take place till Sir G. Barlow's time)—“ the *Army was patient*.” A third says, “ that the abolition of the Tent Contract, and other savings “ from the Army, were well known to the Officers, months “ before the arrival of Sir G. Barlow, *without producing any “ visible discontent among them*.‡ I must impute, says the same “ Dissent, to the violent and arbitrary measures of the Government,” (Sir G. Barlow's), “ *all the dissatisfaction* and unfortunate events that have taken place at Madras.”§ And in general all the Dissents are totally silent as to any existing dissatisfaction before the Government of Sir G. Barlow; and those which do not directly ascribe to him the commencement of the evils, seem to set out with tacitly assuming, that no complaint was heard of till his time.

After what has been already said, we need hardly observe, that all such representations or views are in direct contradiction to the records, which, according to Mr. Elphinstone, are our only authentic source of information: and thus Sir G. Barlow is condemned, not only without due evidence, but against it. Such statements may, perhaps, be advanced in the anonymous publications, of which many have issued from the press, relative to the late disputes at Madras. It is to be expected, that in such disputes, where numerous individuals, having a deep personal interest at stake, are engaged in opposition to a public officer, or to a Government, the assailants will be many and active; that they will endeavour to impress the public with their own views of their case, and the one which they oppose; and it would be wonderful if their passions and interests should not mix in their representations. But such representations, without proof or authority, can be no materials for Judges to act upon. There is, indeed, one publication which may be thought of a different character, entitled, “ *A Statement of Facts, by William Petrie, Esq.*” Of that publication it is proper to remark, that it comes to the English public without any such voucher

as, in the absence of the reputed author, it ought to have, of its being his production, and sent to the press by his own authority. It falls, therefore, under that description of unauthenticated information which Mr. Elphinstone calls "*ex parte* evidence," that should never be implicitly believed, or acted "on;" and, as a document, independent of its matter, it is liable to this further objection, that it is not only no record in the Company's Consultations, but purports to have been a private communication to Lord Minto, and does not appear to have been at all communicated to Sir G. Barlow, as it should have been, before it was used as an appeal against him anywhere else, even to the Governor General. We think, however, it bears internal evidence of being the work of Mr. Petrie; and, from its whole substance, and its dates, to have been the original from which this Minute, already quoted, was formed, with the omission of those parts which most strongly reflect on Sir G. Barlow, on whom, and on whose measures, it now comes forth, under the title of a Statement delivered to Lord Minto, as a public attack; an attack made in a pending cause, far distant from, and unknown to the party accused, who has thus no opportunity of defending himself. But when Mr. Petrie censured Sir G. Barlow, in his Minute of the 8th September, drawn from a work which, excepting the conclusion, was composed, as appears by its date, in the month of August, it should seem that he ought to have brought forward all he had to charge against that public officer, and not to have reserved the severest part for the private ear of the Governor General, or for dissemination among his distant friends; more especially as the *Statement*, being written partly in the manner of a diary, exhibits the dismal prospective pictures drawn from time to time by Mr. Petrie's apprehensions, which are calculated to make impression on the reader, although when he delivered the *Statement* out of his hands, the dangers foreboded in it were at an end, by the complete suppression of the rebellion. Certainly, therefore, it should have no reception prejudicial to Sir G. Barlow, though it is to be feared the case is very much otherwise; but it may be received as Mr. Petrie's own account of his principles, opinions and conduct, in relation

tion to the subjects in question, and as such we shall take occasion to refer to it. With respect to the present point, it uses the same language as the Minute. "*When at Cuddalore,*" (in June) "*I heard of considerable discontents in the Army ;*" but it goes more plainly to place the rise of these discontents *after* the accession of Sir G. Barlow, without, however, any precise information on that head, and without a shadow of evidence that no discontents prevailed before. Indeed, the paper would shew Mr. Petrie to have been ill informed of the state of the military mind. "Although," says he, "the projected reductions were severely felt," (by General Macdowall and the principal Officers to whom he, when Governor, explained them) "*I must, in truth and justice, declare, that there was not a sentiment expressed incompatible with the strictest principles of military duty and subordination.*" That individual Officers *might not choose to express to the Governor* any sentiment incompatible with military duty, is very conceivable ; but that the great body of the Officers, so far from really acquiescing in the new retrenchments, as their duty required, were at that very time discontented on account of the old, and cherishing schemes of obtaining, by combination, new concessions, is very evident, from all the authorities already adduced, especially from General Macdowall's letter to the Governor, in which he not only tells him of "deep-rooted, widely disseminated discontents," at a time when Sir G. Barlow had originated no one public act towards the Army, at which, in all their subsequent violences, they have expressed offence, but plainly shews, that he himself sympathized in their feelings and opinions. Mr. Petrie's *Statement*, moreover, was written sixteen months posterior to General Macdowall's letter, when the standing discontents of the Officers, for alleged old grievances, had fully developed themselves ; and the hollow phraseology which, so long after, would imply, from the circumstance of individual Officers not expressing to him "any sentiment incompatible with the principles of military subordination," that the Army in general dutifully submitted to the new retrenchments, is plainly most unsatisfactory.

When, then, Sir G. Barlow came to the Government; there was a formed spirit of discontent in the Army. Only two months before, his predecessor, Mr. Petrie himself, had publicly stated, "that a spirit of insubordination and cabal had shown itself, which must be dangerous to all Armies, and might lead to consequences of the most fatal nature; that every means of the most public nature had been taken at some of the principal military stations, to hold up Lieutenant Colonel Sentleger as the champion of the rights of the Company's Army, and as one whose example called for general imitation." The Officers were dissatisfied on the score of former retrenchments, (although certain compensations for them had been determined) and of recent or projected reforms; they aimed at new concessions; they acted by combination; the sentiments of the Commander in Chief were favourable to their views and pretensions, and he was himself an avowed malcontent. Candour will not refuse to admit that Sir G. Barlow was placed in a difficult situation; and it will be no departure from impartiality, to inquire what line of conduct he ought to have proposed to himself, when he became sensible, as he could not fail soon to be, of the embarrassments he had to encounter. Should he have inclined to gratify the Officers, by restoring the Bazar fund, abolished on the most incontestible principles of sound policy, or by stopping the progress of the new retrenchments, common to all the Presidencies, and enjoined, not only by the Supreme Government of India, but also by the controlling authorities at home, under the most imperious necessity, for the safety of the Company? Or should he have countenanced new and before unheard-of pretensions? Should he have encouraged the spirit of combination, of which he himself had formerly seen the dangerous effects, and which Mr. Petrie had so recently pointed out and denounced? Probably no person, unconnected with the Madras Army, will venture to reply to any one of these questions in the affirmative. All who duly regard the interests of the Company will be ready to maintain, that he could not propose to stop short in the necessary work of general retrenchment, which was going on all over India; and that, at the moment when such retrenchment was indispensable, it was impossible for him

State of the Army when Sir G. Barlow came to the government.

Inquiry into the means of conciliation then in his power.

to lend himself to new concessions. It is then fair to look again at the situation in which he stood, and at the views, the temper, the combination of the Army. Was it possible to *conciliate* them to what must necessarily be done? It is reasonable to ask this question, but not to assume the affirmative. No doubt a Government ought at all times, and especially in times of difficulty, to cherish a conciliating spirit; and we shall hereafter examine whether this was done in the present case; nay, we shall allow it here to be supposed, for the sake of argument, that the Government may have been deficient in this respect; but still, more is not to be expected from this quality than it is calculated to produce. And it must have been a very extraordinary talent of persuasion, a fascinating ascendancy, that could have induced a very numerous body, with the majority of whom the Government could have little personal intercourse, among whom popularity was gained by contending for the *rights of the Army*; a body who were influenced much less by individuals, even of the military class, than by an *esprit du corps*, and who strongly relied on the success of combination; to set aside their long-indulged prejudices and wishes, their interests and opinions, without any substantial compensation, unless in the principle of public duty. For a Governor had no compensations of interests to offer them, and he could not honestly hold out expectations not likely to be gratified; nor could he, without sacrificing the requisite dignity of his station, attempt to gain them by unbecoming flatteries and submissions; neither, indeed, was this method likely to succeed. In short, the extreme difficulty of persuading a large body of military men, so circumstanced, to give up their favourite objects and passions, must be admitted, and the practicability of it to be incapable of proof, except by example; an example which the Indian history has not yet afforded. The continuance, and even the growth of that spirit which had long prevailed in the Army, was therefore to be expected; and it is subsequent to the time Sir G. Barlow thus set out in the Government, that we are to look for the more proximate causes of the sedition and revolt to which the Officers advanced.

Proximate
cause of the
revolt.

From the period of Sir G. Barlow's accession in December 1807, till towards the close of the following year, there does not appear to have been any one act of his Government at which the Army could have even a pretence for taking umbrage, or which they have, in point of fact, ever made an article of complaint.

*State of matters
between Govern-
ment and the
Army in the
following year,
1808.*

The confirmation, indeed, by the Supreme Government, of those retrenchments which Lord William Bentinck and Sir John Cradock had proposed, and of which Mr. Petrie, when in the Government, had on record strongly expressed his approbation, arrived early in 1808; and Sir G. Barlow performed only an unavoidable duty in proceeding to carry them into execution. But in doing this, instead of adding to them, he relaxed in favour of the Army some of the regulations enjoined by the Governor-General in Council, to the acknowledged satisfaction of General Macdowall, who professed to think that the Army also had cause to be satisfied. Mr. Petrie's statement says, that, the unpopularity of the measure of abrogating the Tent Contract, was reported to him to have been greatly increased by the manner in which it was given out in General Orders. He might have referred to the General Order, before he had conveyed to his reader this idea of it. Happily this Order is in the India House. It proves to be a plain inoffensive paper, written in the ordinary official style, and adopted by Government on the recommendation of the Commander in Chief, (General Macdowall).

But in this period, the conduct of General Macdowall himself, as it stands authenticated by public records, is marked by a most pernicious activity, and demands the most particular attention. At the time of his appointment to the chief command of Fort St. George Army, the Court of Directors were nearly unanimous, on general grounds which have never yet been invalidated, though since overruled, in resolving that the Commanders in Chief at the subordinate Presidencies should not have a seat in Council—a point entirely optional with them, and on which they had formerly exercised their discretion. General Macdowall

*Conduct of Gen.
Macdowall.*

was

was not *deprived* of a seat in Council, as Mr. Petrie has expressed it in his *Statement*: he never had a seat, nor any right to one, or to the chief command, unless the gratuitous act of the Court had conferred it on him. He accepted the office of Commander in Chief, without a seat in Council, and was therefore bound by his honour and his oath to fulfil the duties of that office. But he entered upon it with feelings of indignant discontent, which he was at no pains to conceal, intimating, perhaps with some hope, the arrangement might not be final, that he would return to Europe rather than let the office be, what he termed, degraded in his person; and for a time maintained the appearance of some good understanding with the Government. But as the shipping season drew nearer, without any indication of a change in respect to him, and before, indeed, there was time for such a change, had it been intended, he began more openly to vent his resentments in expressions of disrespect towards the executive body of the Company, and the local Government, before even any thing had occurred in India which could furnish him with a pretext. He espoused the views of the Army, and became the champion of their rights, and imbued them with his personal resentments; he joined factions with which neither he nor the Army had the least concern—factions raised in the civil community, and most unjustly, in our opinion, against Sir G. Barlow; using the influence of his office and the popularity he thus acquired to harass and degrade the Government, and proceeding wantonly from one act of violence to another, still on the side of Army feelings, or in support of the pretended rights of the Commander in Chief, which the Army had been brought to incorporate with their own, until the seeds of alienation and sedition were widely sown, and the Officers were left by him in a state of ferment and disaffection, which, excited yet further by the criminal activity of his friends, after his departure, and by new circumstances, carried them from one stage to another, until the whole ended in open insubordination and revolt.

The history of General Macdowall's proceedings, which bears out the facts here stated concerning him, is so fully exhibited in the

the records transmitted by the Fort St George Government, in the comments of the Court of Directors upon those proceedings, and in the very clear and convincing detail which Lord Minto has given in his letter of 5th February 1810, that it is unnecessary to go minutely into here ; but some circumstances sufficient to support what has been now advanced it may be proper to notice.

In the month of May 1808, General Macdowall, of his own motion, addressed to Sir G. Barlow the letter already mentioned, which being on the records, need not be transcribed here. It is more remarkable for its tenour than its professed object ; because, at a time when it is now known he was united in sentiments with the Army, as well as discontented with the Government, he communicated, in the forms of confidence, to Sir G. Barlow, that an address was preparing from the Officers to the Governor General for Bengal allowances, which proceeding he knew to be contrary to established rules. But, having done this, he goes on immediately to express in forcible language the discontents of the Army, and his own,—the difficulty of checking the spirit of remonstrance, "*which*," says he, "perhaps extends further than *we are aware of* ;" and he notices "the many points *which the Army had formerly gained by representation, as naturally leading them to expect relief*:" he also alludes to the "convulsions" in the Bengal Army, of which Sir G. Barlow had been a witness. And then coming to the ostensible object of the letter, namely, to consult how and when the proceeding ought to be opposed, he says, "Nothing can be more simple than the publishing an Order," (that is, by Government) "highly disapproving the nature and tendency of the Memorial to Lord Minto, and stating, that any Officer who shall encourage similar remonstrances, shall incur the severe displeasure of Government. Will this have the desired effect ? It will be very easy for me to decline transmitting the address, and to express my own sentiments: *but will this mode be correct ?*"

It must be owned, the Commander in Chief here presents a picture

picture well fitted to alarm, without proposing any thing that might strengthen the hand of Government. On the contrary, he questions the propriety of his own interference, and whilst he suggests a General Order of Government, *severe in its terms*, as an obvious expedient, he intimates a doubt of its efficacy. A timid mind might easily have been shaken by such a representation from such a quarter. But the answer given by Sir G. Barlow * opposed irrefragable arguments against the design on foot, and General Macdowall, in consequence, "made corresponding communications to the Officers commanding the principal military stations; requiring them to adopt the most effectual measures for stopping such proceedings." †

* See the import of it, in paragraph 33, Fort St. George Military Letter, 29 Jan'y. 1809.

† Do. Do.

The circular letter of General Macdowall, on this occasion, points out in forcible terms the exceptionable nature of the intended Memorial, as militating against established Orders, and as calculated to excite a spirit of discontent and insubordination in the Army, whence it would be the duty of the Commander in Chief, should he eventually be obliged publicly to consider the Memorial, to bring to punishment those who might have been most active in supporting it. ‡ Could it have been conceived that, at the very time he was thus in appearance acting in concert with Government, for the suppression of this prohibited, culpable and dangerous proceeding, he was really co-operating with the insubordinate spirit of the Army he commanded, and counteracting, his own circular letter? The fact is now established. Something of this nature seems to have been early hinted at by the Government of Fort St. George §; but formal proof was then wanting. The Court, however, have since been assured, on evidence which has received Lord Minto's confirmation ¶, that, at the very period General Macdowall was circulating the letter in question, "he was acquainting the Officers, in personal and convivial communications, that his circular letters were merely official, written at the requisition of Government, but not expressing his own sentiments; and that he wished them success in their pursuit." And Lord Minto further intimates, that General Macdowall's letter to the Governor, of the 16th May 1808, containing an enumeration of military

‡ See also Lord Minto's Letter, 5th February 1810, para. 16.

§ Military Letter, 29 January 1809, para. 34.

¶ Letter of 5th February 1810, para. 16.

military grievances, and a significant reference to the successful struggles of the Bengal Army in 1796 against the Government
 “an enumeration,” says his Lordship very justly, “which, if
 addressed in the same language to any other quarter, was
 calculated not to repress a particular act of insubordination,
 but to excite a general mutiny”—had been communicated by
 General Macdowall to other men. Let it be remembered, that
 at this time General Macdowall had not pretended to have re-
 ceived any personal injury or offence from Sir G. Barlow; and
 that he maintained with the Governor, as appears from the let-
 ter in question, the forms of confidential intercourse. In the
 month of May, General Macdowall set out on a tour to the
 different stations of the Army, and seems to have been little at
 the Presidency till towards the autumn, soon after which he
 went again into the Northern Circars. The records of the Ma-
 dras Government, during this period, do not, as far as we have
 discovered, contain any material information relative to the
 temper of the Commander in Chief; and but little concerning
 the Army. It would appear, from letters of the Government
 written afterwards to General Macdowall, that they were stu-
 pidly entangled in controversy with him* and his letters to them,
 on the other hand, indicate no backwardness to express his
 feelings. A desire naturally arises, to know what was passing
 in that period, from May to December. Lord Minto's letter of
 the 6th February, 1800, affords some light into this matter. He
 states it as a fact, too positively asserted and too generally
 “known at Madras, to leave the shadow of a doubt upon his
 “mind, that General Macdowall's conversation at his own
 “table, uniformly conveyed to the Officers of the Army he
 “commanded, sentiments hostile to the Government he served;
 “and clothed in language disrespectful and contemptuous.”
 His Lordship says, in reference to this statement, that specific
 instances have been related to him, by persons entitled to im-
 plicit faith, who were themselves witnesses of what they re-
 ported; “and that, on this general point of conduct, the
 “accordant assurances, given in confidence, of those whose
 “means and knowledge have been such, and whose personal
 credit is, in his judgment, so much beyond question, that he
 “can

* Military General Letters, Vol. 1, January 1800, and the marginal references.

“ can neither resist a personal conviction, nor think himself at
 “ liberty to withhold the expression of his belief, that the con-
 “ duct of Lieutenant-General Macdowall was certainly such as
 “ it has been above described.”

His Lordship next adduces, to the same effect, a clear and solemn act done openly by General Macdowall, namely, his address to the Commandant of the European regiment at Masulipatam (that regiment afterwards so conspicuous in the revolt), when reviewed by the General on the 24th December 1808. This Address, having been printed in a periodical publication at Madras, whilst General Macdowall was on the spot, may certainly be regarded as authentic. It is already known here, but contains expressions so remarkable, in reference to the present point, as to deserve special attention. “ It was my particular
 “ wish to see those (regiments) in the Northern Circars, and
 “ particularly the Madras European Regiment. From many
 “ circumstances, *this regiment has, in a measure, been overlooked,*
 “ *indeed I may say, neglected.* Placed in a corner of this extensive
 “ country, it has seldom had its practice with the other corps of the
 “ Army. Notwithstanding these circumstances, from my know-
 “ ledge of your zeal and ability, Colonel Taylor, I was con-
 “ fident I should find this corps in the high state of discipline it
 “ has this morning evinced; and it shall be my business, as
 “ much as lies in my power, to let the service benefit from this
 “ state of discipline, by calling it into more general notice; for
 “ I know that this state of inactivity must be painful to the
 “ feelings of honourable gentlemen and officers, and painful
 “ to the feelings of honourable gentlemen and Officers, and
 “ painful to the feelings of brave soldiers. *Indeed, I am at a*
 “ *loss to know the reason of this neglect.* This regiment has
 “ always been forward for its courage and loyalty: you are
 “ composed of the same materials as the other European corps
 “ in the service, and I am sure that the same brave and generous
 “ spirit actuates you.”—“ This Address,” says Lord Minto,
 “ requires no comment; and I shall only observe, that it is
 “ adduced as one example of the means employed habitually by
 “ Lieutenant General Macdowall to foment discontent in the
 “ Army,”

} “ Army, and to exalt his own popularity with that body, at the
 “ expence of the most obvious duties of his station, and inte-
 “ rests of the public. It affords also a very clear specimen of
 “ the practices imputed to him on the tour he was then making
 “ to the several stations of the Army.”

The view with which these evidences are brought forward, is thus explained by the Governor General: “ *The deliberate inten-*
 “ *tion of Lieutenant General Macdowall to make the Army an*
 “ *instrument of opposition and disturbance to the Government*
 “ *of Fort St. George, forms so remarkable a feature, and proved*
 “ *so operative a cause in the events under review, that I feel the*
 “ *propriety of establishing so material a point, before I enter*
 “ *on the discussion to which they gave rise.*”

Of the truth of the fact here illustrated, we have long been thoroughly convinced, from the whole tenour of the Madras advices and records; but the Dissents we are called to answer, require us to insist upon it; and it is satisfactory to find it confirmed by new proofs. It was immediately after the return of General Macdowall from the different Army-stations, to Madras, in the beginning of January 1809, that the disputes between him and the Government commenced. Till then, let it be again remarked, no public controversy had arisen between the Government and the Commander in Chief, or between the Government and the Army. No act of Sir George Barlow's towards the Army was at this time complained of; not a single instance even of uncourteous behaviour on his part towards the Commander in Chief is mentioned: whilst, on the other hand, the proneness of that Officer, from the beginning, to take offence is visible.

At this stage, therefore, it may be proper to advert to the account which the Dissents give of General Macdowall, in the period through which we have been passing.

The accounts given in the Dissents of General Macdowall.

Mr. Pattison draws the following contrast: “ Although General Macdowall was not appointed to Council, he was”
 (that is, during the temporary Government of Mr. Petrie)

"quiet, and to all appearance resigned." "General Macdowall, on the part of the new Government, meets with slights." "Who can avoid tracing the evils which ensued to their real source, in Sir George Barlow's harsh and unconciliatory character?"*

* Mr. Pattison's
Dissent, 21 April.

General Macdowall's cordial support might have been gained by attention, civility and politeness." "At the head of the Army, pushed from one step to another, he fell at last into error which is unpardonable."† Another gentleman seems to assign the non-appointment of General Macdowall to a seat in Council, as one of the original causes of the evils; and he goes on to say, "It was but too true that General Macdowall had been neglected by the Governor on many occasions. It had been the general practice of the service, and often directed from the Court, that the Governor should pay great attention to the recommendation from the Commander in Chief, upon all military promotions, and consult with him upon military subjects. All Orders to the Army ought necessarily to go through the Commander in Chief: those necessary and wholesome regulations the Governor entirely left out of his sight; and on many occasions seemed to wish to engross the power of Governor and Commander in Chief in his own person."§

† Dissent of Sir
F. Baring and Sir
H. Inglis.

§ Mr. Elphinstone's
Dissent
15th October 1809.

Where, we would ask, are the evidences of these comprehensive charges, or any part of them? The records, through the course of a whole year, from December 1807, to December 1808, afford no fact that can be turned to such a purpose. These gentlemen have produced no fact. So far was General Macdowall, who did not know till the 3d November 1807, that the Commander in Chief was left out of Council, from being "quiet and resigned," as Mr. Pattison says, that he, immediately on receiving that knowledge, applied to General Hewitt for leave to proceed to Europe, Mr. Petrie being then Governor. His Government continued only seven weeks afterwards, in which little space General Macdowall, then new in the command, had not opportunity to act such a part as he subsequently did. At a time when General Macdowall made no complaint of want of attention, of no harshness or unconciliatory conduct

duct on the part of the Governor, and was acting in confidence with him, to suppress insubordination, he proceeded secretly to foment it. Was there any fair "attention or civility" within the Governor's power, which could gain or secure such a man? Did any act of the Governor's "*push him,*" amidst professed co-operation, to that species of counteraction which had a decisive effect on the conduct of the Army? If the influence of Counsellor had been added to that of Commander in Chief, would it certainly have been better employed? Mr. Elphinstone§ quotes one solitary case, in more aggravated terms than General Macdowall himself uses—the ordering of the Travancore expedition, without previously or fully consulting him. Mr. Pattison|| uses the expression of "troops ordered to march" "without his knowledge," with a double note of astonishment: as if the bare idea carried in it its own condemnation; as if it had been the cause of the evils that ensued; and as these, amongst the other evils, proceeded from Sir George Barlow's "harsh and unconciliatory character." This is the only specific complaint of neglect adduced by General Macdowall himself. On all the other occasions of military equipments, during General Macdowall's command, his opinion was taken, and the details committed to him. His complaint on this, is answered by the Government in the most solid and satisfactory manner.

§ Dissent, 15th
October 1809.

|| Dissent, 24th
April 1810.

From reading the two Dissents just quoted, it might be supposed, that General Macdowall was present at Fort St. George, was wantonly passed over, and this from harshness and unconciliation in Sir G. Barlow. The fact is proved to be, that General Macdowall was in the Northern Circars, far distant from the Presidency; that instant dispatch was most important; the delay of corresponding with the Commander in Chief hazardous to the whole object; and that no temper of Sir G. Barlow's, but the necessity of the public service, induced the immediate commencement of operations, of which, however, at the same moment, full information was sent to the Commander in Chief. When these operations, after being suspended, were resumed, he had returned to the Presidency,

but,

but never went near the Governor. The Governor, therefore, could not well have a personal conference with him; but he sent the Chief Secretary, Mr. Buchan, to him, with all the papers and communications respecting Travancore; upon which he gave his sentiments at large, and the Officer ultimately placed in the command of the expedition, was appointed expressly on his representation. The letters between him and the Government on these subjects,* mark his extreme disrespect (to use no stronger term) and their exceeding forbearance. Throughout the year, let it be again observed, this affair of the Travancore expedition, is the only one concerning which he made any specific complaint; a fact from which, in his temper of mind, it may be fairly implied, that he had no other charge to bring forward. With the exception of this distorted article, all the charges just quoted from the Dissents are *mere assertions*. They are unsupported by proof, indeed opposed by it: they have nothing in them of the nature of argument, and ought therefore to be wholly laid aside in forming a true judgment. General Macdowall appears to have returned to the Presidency from Masulipatam, early in January 1809. He had adopted and inflamed the pretensions and discontents of the Army; he had impregnated them with his own, and with a spirit of disregard and contempt towards the Government. He had determined to embark for Europe, and, as his conduct proves, to keep no measures with the Government; for Lord Minto states,† that “on his return, he abstained altogether from any communication with Sir G. Barlow, neglecting, or rather systematically refraining from common visits of ceremony, and withholding the most usual observances of exterior respect due to his station.”

* See the Letters of December 1808 and January 1809, on the Travancore expedition.

† Letter to February 1810, para. 74.

Enumeration of the public acts of General Macdowall against the Government,

We approach now to those public official acts of his, which directly attacked the authority of Government, and brought into practical question, its supremacy over the military body; out of which acts sprung the events that immediately preceded the revolt. Under the first head may be enumerated :

The arrest of Lieutenant Colonel Munro, Quarter-master General,

General), in order to be tried for an official opinion delivered by him in 1807, relative to the Tent Contract :

The presentation and warm recommendation by General Macdowall, of a Memorial from the officers of the Army to the Court of Directors, containing a variety of claims, and among others, the right of having the Commander in Chief in Council as their representative :

The censure of Lieutenant Colonel Munro, and virtually of the Government itself, in a General Order addressed to the Army, for his successful appeal to Government, to be delivered from arrest ; and,

The address of General Macdowall to the Army, on his quitting the command of it ; in which he arraigns the conduct of the executive body of the Company.

Under the second head the more important articles are :

The release of Lieutenant Colonel Munro from arrest, by the Government : *and of the ever? thence arising.*

The dismissal of Lieutenant General Macdowall, Commander in Chief, and of Lieutenant Colonel Capper and of Major Boles, Adjutant and Deputy Adjutant General, from their respective situations, for circulating the Address to the Army, censuring Lieutenant Colonel Munro, and the Government through him :

The Government General Order of the 1st May 1809, suspending certain Officers, for being concerned in preparing and circulating a seditious Memorial or Remonstrance to the Governor General, and a seditious Address to Major Boles :

The public acts of the Hyderabad Subsidiary Force, rejecting the compliment paid them by Government on the 1st of May, declaring their participation in the sentiments of the disaffected Officers, and their intention to separate themselves from the

the authority of Government, unless the General Order of the 1st May was rescinded :

The open revolt of the Garrison of Masulipatam :

The publication by the Hydrabad Force, to the Government and the Army, of what they called their Ultimatum, requiring the revocation of the General Order of 1st May; the restoration of all Officers who had been removed; and an amnesty for the whole Army :

The open rebellion of the troops at Hydrabad and Seringapatam :

The establishment of an organized system of combination throughout the greatest part of the Company's Madras Army, for subverting the authority of Government by force of arms; and,

The requisition by Government, on the 26th July, of a test of loyalty from the Officers, in order to discriminate the enemies of Government from the well affected

How these subjects have been considered by the Court—

Military Letters from Fort St. George, 29 Jan. 1800; 31 Do.; 3 Feb.; 28 Do.; 13 May; 6 Sept.; 10 Do.

Letters from the Supreme Government to Fort St. George, 20 Feb. 1800; 27 May.

Governor General's Letters to April 1800; 15 Sept.; 10 Oct.

Military Letters to Fort St. George, 15 Sept. 1800; 29 Do.; 7 Feb. 1810; 1 May.

It is not our intention to enter particularly into the history, or the merits of these various transactions. This is already done in the Indian dispatches and consultations received from the Presidency of Fort St. George, from the Supreme Government, and from the Governor General; and in the answers sent to those dispatches by the Court of Directors, with the sanction of the Board of Commissioners, acting, as no doubt they did in so momentous a case, with the approbation of His Majesty's Government. We have from conviction and duty approved and supported the principles, the reasonings, the decisions contained in those answers, from the authority which is supreme in the Government of India, upon all the matters in dispute between General Macdowall and the Madras Officers on the one hand, and the Governments of Fort St. George and Bengal on the other, and also upon the conduct of those

those several parties. The arguments and the evidences on which the Court have founded their decisions, we have a right to consider as valid, until they are refuted or are overpowered by other arguments and evidences. But we presume to say, that this is not done in the Dissents before us; in respect to the causes which produced the revolt, and to the conduct of the parties concerned; neither does this method appear to be proposed in them. They do not discuss the arguments and reasonings of the Court; they do not invalidate the evidences on which the Court have proceeded, nor prove that it has been unfairly used; nor do they introduce opposing evidence. They assign certain grounds of dissent, and those grounds, as far as they relate to the causes of revolt, (of which we now speak) are stated very much in the way of *opinions*, which, however strongly they may be delivered, are not entitled to claim the assent of others, unless the premises of facts or principles, on which they are founded, and the conclusions justly deducible from them, are exhibited, and are found to warrant such a claim. Nor will assent be more readily yielded, if the language of passion or declamation is used, and if the opinions are opposed by a great majority of the constituted authorities in England and in India. Such certainly is the case here; therefore the arguments employed by the Court, (of which we were concurring members) we are entitled to have considered as part of this defence, equally as if they were specified in it. And we may likewise claim the benefit of the luminous writings of the Governments of Bengal and Fort St. George, particularly of those noted in the margin, upon the insubordination and revolt of the Madras Officers. Writings, many of which, though produced in times of great disorder and peril, are, in our opinion, in reasoning, temper, and composition, surpassed by no State Papers on the records of the Company.

*and are treated
in the Dissents.*

General Letter to
Fort St. George,
29 Feb. 1800; 27
May.
Governor General
to Court of Directors,
25 April 1800;
15 Sept.; 12 Oct.
5 Feb. 1810.
P. S. G. Letter to
Court, 22nd Janu-
ary 1809. Gene-
ral Order, 6th Feb.
Letter to Court, 20
Dec. 1809. General
Order, May 1809.
Dec. Dec. 18
1809. General
Letter to Court,
Sept. 1809.

In opposition to the tenour of the voluminous official documents and evidences from India, and the conclusions formed from them by the authorities in this country, it is, we must be allowed to repeat, the main scope of the Dissents to maintain, that all the evils which have occurred in the Madras Army, and especially

especially the revolt, have been wholly, or chiefly, occasioned by the temper and the measures of Sir George Barlow. Although the numerous evidences and arguments to which we have already appealed, leave, as we conceive, no room for the further maintenance of this doctrine, and it is less easy to argue against mere assertions, yet we shall beg leave to offer some remarks upon it. This is certainly the language of many of the guilty Officers and their abettors. It is the only plea which it is possible to use for them. It is the plea by which numbers still hope to procure impunity to themselves, and disgrace to the Government they have opposed. But how carefully and impartially ought all existing evidence to be weighed, before this conclusion is formed. If wrong, it treats with the most cruel injustice those, who, by their wisdom and fortitude, have saved an empire; it extenuates the criminality of soldiers who have turned their arms against their Employers and their Country; it encourages insubordination, and discourages future resistance to it.

Observations on the opinions given in the Dissents on these subjects.

This proposition seems to assume, that the Officers were, by the immediate impulse of provocation, transported from a settled state of contentment, to a state of insubordination. The error of this proposition has been demonstrated. The proposition seems also to imply, that a revolt was the greatest possible evil; —there was, however, in our opinion, a greater possible evil — the timid, weak submission of Government, to military controul and usurpation. The prevalence of such a power would have subverted the Civil Government, and forced us at length, under accumulated disadvantages, to contend by arms for the re-establishment of legitimate authority. It seems to be taken for granted in the Dissents, that if any act of Government was made by the Officers on occasion of insubordination or revolt, that act must necessarily have been wrong. But the measure must be judged of by all the circumstances as they appeared at the time. It might have been dictated by duty, or have been unavoidable.

The crisis arrived when the Government had only to make its election between submission to the Army, and contest with it.

it. Will it be said that the Government ought to have chosen submission? The Dissents do not affirm this (though something tantamount to it has been said elsewhere); but they dwell in so unqualified a way upon the evils of harsh measures, and the want of conciliation, as to leave one of two things, or perhaps both, to be inferred, that the authors would have deemed large concessions preferable to the continuance of a contest; or think that both concessions and contest might have been avoided by a conciliatory spirit and conduct in Sir G. Barlow. As to the first point, we conceive it has been proved in the writings already quoted,* and is evident from the nature of things, that concession would, in effect, have been submission. With regard to conciliation, it is a topic upon which a great deal has been said, but said, as we think, without either due proof or explanation. The Dissents, the writings of Mr. Petrie, and all the publications which have appeared in behalf of the Officers, are full of this topic. All concur in charging Sir G. Barlow with the want of conciliation, and in maintaining, either that this want occasioned many of the evils which ensued, or, what is much the same, that the exercise of conciliation would have prevented them. Either way the question is begged, and what is advanced on this head resolves itself into matter of opinion. Where the inquiry is concerning the causes of a most momentous event, and the conduct and character of a great public officer, surely more is requisite. The language held respecting *conciliation*, conveys no idea of limit either in the exercise of it, or in its efficacy. But are we to suppose the one or the other may be unbounded? Might not an Army be so confederated, and determined to obtain certain objects from the Government, as that no personal courtesy and civility, on the part of the Governor, could soothe and charm them from their purpose? And might not a Governor, with the most conciliating disposition, be enforced, by his instructions and his duty, to oppose their demands, even at the hazard of irritating them, and becoming unpopular with them? These points should be weighed and settled before the doctrine of conciliation is applied, especially after the solemn declarations repeatedly made by Sir G. Barlow and the Madras Government. "We observe with

* The dispatches from India, and the Answers of the Court.

† General Letter,
31 January 1809.

"concern," say they, † "that the Commander in Chief has conveyed his sentiments in terms unusual in public correspondence, and with disrespect to the authority of Government. But we consider it our duty to abstain as much as possible from controversial discussion of this nature; and we trust that our desire to evince every possible respect for the station of the Commander in Chief, will be apparent." See also their strong profession to the same effect, on occasion of the arrest of Lieutenant Colonel Munro. ‡

‡ General Order,
6 February 1809.

Inquiry how conciliation could have been applied in the several cases of dispute, and brief review of them to that end.

Certainly we ought no longer to be left to vague generalities on this subject, or to unlimited accusations standing not on proofs, but on assertions and conjectures. We wish particularly to obtain some definite idea of the manner in which the honourable authors of the Dissents would have had conciliation practically employed in the different questions that arose, between the Madras Government and the Army, and of the extent to which they think that, under all existing circumstances, it should have been carried, or that Sir G. Barlow, consistently with his duty, could have carried it. Let us turn to the commencement of their disputes, and place ourselves on the scene as it then stood. The

The arrest of Lieutenant Colonel Munro by Gen. Macdowall, and his release by Government.

first question that arose was concerning the arrest of Lieutenant Colonel Munro, which happened about the 20th January 1809. Until this time, it should be once more remarked, there had been no matter of controversy between the Army and the Government since the accession of Sir G. Barlow; but we have seen what the conduct of General Macdowall had been through the last half of the preceding year. What he had stated in the month of May of that year, to the Governor, was then still more emphatically true, and by his own means,—“the seeds of discontent were very widely disseminated;” and “the spirit of remonstrance extended further” than the Governor was aware of; so that the Army, “who,” as he said, “had formerly gained so many points by representation,” were combined to bring forward, under his auspices, and strengthened by his public sanction and recommendation, not only the claim which he had before ostensibly discouraged, but a variety of claims, and among them a seat in Council for “the Repre-

“sentative

“sentative of the Army.” General Macdowall’s “deliberate intention,” (to recur to the words of Lord Minto) “to make the Army an instrument of opposition and disturbance to the Government,” is manifested by what he had done, and by the further measures he pursued.

The first of these was the trial of Lieutenant Colonel Munro, who had advised the abolition of the Tent Contract ; by which trial the Army would be gratified, and the Government affronted and degraded. The case is stated and discussed in the Court’s letter to Fort St. George, of 15th September 1809. Never was there one more clear, nor a proceeding more plainly factious and insubordinate. For using some expressions perfectly fair in general reasoning, according to the principles of human nature, in a confidential opinion, which the duty of his office and the injunction of the Commander in Chief required him to give, respecting the operation of the Tent Contract, Colonel Munro was a year and a half afterwards arraigned, by a number of Officers commanding native corps, of false insinuations injurious to their characters. Sir J. Cradock, the late Commander in Chief, had adopted his opinion ; two Governments of Madras preceding Sir G. Barlow’s time, and the Supreme Government, approved of it ; and his plan of abolition was carried into execution. These authorities had made the whole their own measure. But, “aided by collateral circumstances, the adoption of the improved system had excited a great degree of clamour in the Army, and the Quarter-master General was chosen as the object of obloquy.” Now it was proposed by the accusers and General Macdowall, although the words were evidently within the natural scope of official discussion, and Colonel Munro had disavowed all intention of reflecting on any individual, that he, a confidential Staff Officer, for an act which the discharges of his bounden duty according to his conscience demanded of him, should be brought to the ignominy of a public trial ; and General Macdowall, without even apprising the Government, actually put him under arrest for that purpose, although he had been previously informed by the Judge Advocate General, his legal adviser, whose opinion he

he had required, that the charges were of an illegal nature. This was at once to strike at all fidelity in Staff Officers, and to bring the measures of Government before a military tribunal for decision. The Advocate General also, whose opinion on the case had been required by Government, stated that Lieutenant Colonel Munro was entitled to their decided support. The Officers themselves state in a Memorial to the Government, on hearing their proceeding was illegal, that they solicited the charge might be *suspended*; but General Macdowall has said that he had not seen *that Memorial*, when on the 20th January, he directed Lieutenant Colonel Munro to be put under arrest. The letter, however, of the Officers, to the Adjutant General, conveying that Memorial to the Commander in Chief, is dated in December. The Government used all the endeavours they could, to prevent General Macdowall from persisting. Nevertheless he refused, with very aggravating circumstances, to release Lieutenant Colonel Munro. What were the Government to do in this case? It may be said, to *conciliate*. "It was the wish and endeavour," they affirm, "of the Governor and Council, to effect this object," (the removal of the arrest) "by every means of conciliation and explanation;" but their efforts were fruitless. Were they then not only to abandon to persecution and the shame of a public trial, a most meritorious and confidential public Officer, for the performance of his duty, but, to submit their own acts to the judgment of a tribunal of their Officers? This was the question they had to decide upon, but not the only question depending. The proceeding was plainly the work of military combination, directed against the authority and dignity of Government itself, and its success would certainly encourage other attacks. They were forced, therefore, to act here, as in several following instances, in their own defence. "We should not," say they to the Court*, "in ordinary circumstances, have adopted a measure, of this nature, but we are satisfied that a more fatal shock to the public authority could not have been experienced than in permitting the charges which had been preferred by the Commander in Chief against Lieutenant Colonel Munro, to be brought under the investigation of a Court Martial."

"This

* General Letter
29 January 1860.

" This measure would have involved in its immediate effect,
 " under circumstances of the most offensive nature, the de-
 " gradation of the public acts and character of the Govern-
 " ment, the annihilation of all confidence on the part of its
 " public Officers, and the utter confusion of the departments
 " under its authority."

Colonel Bannerman is the only Member of the Court who has maintained that this proceeding of the Government was contrary to law, founding his opinion on the Act of 27th Geo. II. The discussion between the Colonel and us, of a legal point, would perhaps not entirely settle it. But he has not answered, and we apprehend will find it impossible to answer, the following opinion of the Court, on the demand of a combined number of Officers, for a Court Martial on Colonel Munro. †

Observations in the Dissents upon the affairs of Lieut. Colonel Munro, and Answers to them.

† General Military Letter, 15 Sept. 1809.

" Para. 13. If any Officer thought himself alluded to or aggrieved by any thing that Colonel Munro had said, he might easily have repelled the supposed imputation by demanding that, if he were suspected, he should be brought to trial upon it. Government would then either have granted a Court Martial, or would have officially and publicly declared, that no imputation rested upon such Officer."

" 14. Each individual Officer would have had an undoubted right to have demanded such a clearance or trial for himself; but an Officer in command of one particular corps cannot, in the nature of things, undertake to answer for the conduct of an Officer in command of another corps, far removed, perhaps, from his possible observation; much less for a whole body of such Officers so circumstanced."

" 15. The character of each individual must be distinct and particular, and a combination, therefore, of many Officers, to repel insinuations (supposing such to have been advanced) against unnamed individuals of their body or class, respecting whose conduct the personal knowledge of the
 " Members,

" Members, generally, of that body, could not enable them to speak; does not seem to be founded in any principle of equity; nor would it be justified by alleging that general insinuations against the whole body, but pointing to no Officer by name, could not be met in any other manner; for the obvious course to be followed in that case would still be, that every individual Officer who conceived his character to be brought into question, should desire to have his own conduct separately investigated."

" 16. But we are the more astonished at their proceedings, when we consider the expressions which have been assigned as the ground of the charge. Detached as they have been from their context, they still appear to us to be couched in the usual style of official discussion: and to be as far from conveying any imputation against individual characters, as the Minutes of Sir J. Cradock and Mr. Petrie, by which the plan was supported. But when they are considered, as they actually stand in the Paper prepared by Colonel Munro, as forming a part of the chain of reasoning founded upon general principles, it appears to us, that no inference can fairly be drawn from them unfavorable to the character of the Madras Army."

To us these remarks alone appear conclusive against granting the Court Martial in question, and therefore against the *legality of the arrest*; but on the general question, of the power of Government to remove arrests, it is fair to refer to the very able opinion of the Judge Advocate General of Madras, supported by that of the Advocate General, which maintain the legality of it. The Indian Governments are in the general practice of ordering Officers under arrest; and their rights, release is understood by the Judge Advocate to be a receive principle in the Army. It is certain, that long after the Act of George II. that is, in 1783, the Government of Madras exercised the power of removing an arrest imposed by the King's Commander in Chief upon a King's Officer. * The Judge Advocate mentions also a case where two Officers had been recently

* Col. Sterling.
See F. S. G. S. 1877
Letter, 24 June 1877
G. 1877.

released by the Bengal Government, from an arrest, under which they had been placed by the Commander in Chief of that Army; and however the Act of George II. (passed before our acquisition of territorial dominion in India) may have been intended, we conceive that it must merge in the very large and comprehensive powers given to the Company's Governments by the Acts of 1784 and 1793, in all matters, military as well as civil.

Colonel Bannerman says, "it might be a distinct and aggravated ground of accusation," that the "insinuations" and "aspersions" contained in Colonel Munro's Report, were adopted by Government as their own; and that it is wretched sophistry to contend that, because a public act has been founded in "calumny," therefore the "calumny" ceases to be such. But in all these remarks he evidently *begs the old question*. It is denied that there is any insinuation, aspersion, or calumny, actual or intended, in the Report. Colonel Munro has disavowed all intention of reflecting on the Officers. Government have declared, that under any correct construction, no offensive meaning can be attached to the words used by him.

Mr. Elphinstone and Mr. Pattison charge Sir G. Barlow with having brought Colonel Munro's Report "most unnecessarily" out of the secret Records, and delivered it to the Adjutant General.* "Hence," says Mr. Pattison, "sprung the fatal feuds between Colonel Munro and the Officers." The fact, however, is, that Colonel Munro's proposition for abolishing the Tent Contract, after having been referred to Government, was submitted to the examination of some Officers of talents and experience, and, on receiving their concurrence, adopted by Lord W. Bentinck, referred to the Supreme Government in the Public Department, and in the time of Mr. Petrie, entered on the Consultations in the Public Department on the 7th October 1807, and transmitted to the Court of Directors with the public letter of 21st October 1807. To suppose, therefore, that from the period of all this publicity, which took place before the arrival of Sir G. Barlow, the paper could remain a secret to the Officers, (if indeed it was not known to them still

* Note.—Had the fact been as here stated, these Gentlemen would have done better to have denounced the conduct of the Staff Officer who betrayed the confidence of the Government, by the communication of a secret record.

earlier,) would be altogether idle. But we have the account of this matter unfolded in Lord Minto's last dispatch. According to the information given to him by Colonel Munro, (who would hardly venture to state, on such a point, what he could not substantiate,) Colonel Capper, Adjutant General, the intimate friend of General Macdowall, forwarded to several Officers in his own and General Macdowall's confidence, all the passages in Colonel Munro's Report, that could be construed into an offence to the Army; and these passages were soon transmitted by the Officers, two of whom were Colonel Vesey and Colonel Sentleger, to the Commander in Chief, with a demand for justice, &c. This points distinctly to the confidential friend of General Macdowall, as the source of this business; and General Macdowall's refusal, as will be seen afterwards, to receive a public disavowal from Colonel Munro, of the sense put on his words, which must have stopped the whole proceeding, gives him the appearance of being a party in the design. It was not till the month of June 1808,* eight months after Colonel Munro's paper had been a *public document*, and when the Commander in Chief had decidedly adopted and fomented the contents of the Army, that the idea of arraigning Colonel Munro was agitated: and it was three months more before charges against him were brought forward. Mr. Elphinstone's representation, therefore, that the Officers acted on coming to the knowledge of the paper,—that "*they took fire*" as on a sudden discovery, and demanded a Court Martial, is not only wholly unsupported by evidence, but opposed by it. Some other views which he gives relative to this matter may also be noticed. He says Colonel Munro intended the agency of the new system of tent provision for himself. We presume he infers this because the new plan proposed to charge the Government with the provision of tent equipage, and it might hence fall within the province of the Quarter-master General; but the plan nowhere points to any salary or emolument for the superintendence of that business; and it is unwarrantable to insinuate, without the least evidence, that an Officer of distinguished character was influenced by private motives in recommending a great public measure. The honourable Writer forget, on this occasion, that he was,

* Col. Munro's Letter to Government, 22d Jan. 1809.

at the moment of writing these words, treating with tenderness the complaint of Officers who, only on a construction of general expressions, alleged themselves to be aggrieved ; he forgot too his own rule of adhering to the public records ; and unhappily the Dissents before us furnish very numerous instances of the same nature, without supplying the want of public proofs by any satisfactory private evidence. But, on the other hand, Mr. Elphinstone thinks " General Macdowall might have had many " good and substantial reasons for what he did, which we as " yet know not." It is to be presumed, then, that the reasons he publicly recorded in his letter of the 25th January 1809, were not thought by him " the best reasons," and that he reserved till he came home, reasons " good and substantial," for a body too, with whom he would not condescend to have further explanation ? Mr. Elphinstone says, General Macdowall seemed desirous to prevent a Court Martial, and declined it to the Officers individually. It appears, however, from the facts, that his objection was not to a Court Martial, but to individual application for one ; which was, as has been already shown, the only way wherein such a business could be taken up by him. " When," says Mr. Elphinstone, " a Court Martial was requested by 19 of the senior Officers, its complexion was " entirely changed ; " which is most true, for then there was a combination, and a charge which it was impossible any one Officer could intelligently make on behalf of all the rest. " But " he (General Macdowall) still tried to stave it off," and " applied to the Judge Advocate for his opinion." Did he then, on being advised by that Officer, that the proceeding would be illegal, and on being strongly dissuaded by him to refrain from it, gladly avail himself of such authority, to put an end to it ? Quite the contrary. In defiance of this opinion of his legal adviser, he persisted in bringing the charges forward. " But " he gave full time," says Mr. Elphinstone, " to the Government, to explain their sense of the Memorial to the General, " and for him to have done it to the Officers ; which would, in " all probability, have had the desired effect ; and they had no " reason to doubt but he would have been as ready to have " done it upon this occasion as he had been upon a former :

“ but nothing of the kind was attempted.” Whether the explanation of the sense of Government, or the General's readiness to convey that explanation to the Officers, *as on the former occasion* (respecting the suppression of the Memorial for Bengal allowances) would have had the desired effect, the account already given of that former occasion may show. But he did not so much as inform the Government that a charge was preferred to him, against Colonel Munro, though it evidently involved a question concerning their acts. They were not indeed uninformed of the fact ; but, instead of interfering to tell him what was his duty, they concluded “ he would take due means to suppress such factious proceedings, and give the Quarter-master General the protection to which every public Officer was entitled in the performance of his duty.” However, to the great surprise of Government, he even put Colonel Munro in arrest, without giving him any previous intimation. Still they thought the communication of their sentiments of the arrest, as “ contrary to the clearest principle of order and justice,” would induce General Macdowall to remove it. So far from it, that he told them it was his intention to bring an additional charge against Lieutenant Colonel Munro, for having appealed to Government ; “ without which appeal,” say they, “ we should have had no authentic information of the circumstances of the case, until the conduct of Lieutenant Colonel Munro, and with it the proceedings and orders of the Government, had been brought before a Military Tribunal for decision.” “ But,” says Mr. Elphinstone, “ he gave full time to the Quarter-master General to explain away the offensive expressions : ” “ Even he would make no advances.” Does General Macdowall himself insinuate any thing of this kind ? No ; and as at the same moment that General Macdowall made the affair a public one, Colonel Munro publicly disavowed the injurious sense put upon his words, and did this still in time enough for General Macdowall to have acted upon this disavowal, had he been so disposed, the fair presumption is, that he made this disavowal personally to General Macdowall from the beginning. But we are now relieved from conjecture in this matter. Colonel Munro

Munro has stated to Lord Minto, that on first learning from General Macdowall, about the month of September, of the dissatisfaction of the Officers on this score, he "earnestly requested the General to permit him to address a letter to him, disavowing the meaning imputed to his words, which they were never intended to express. General Macdowall refused his permission, as the Tent Contract, he said, was done away without his being consulted ;"—a very inadequate reason, for he was not Commander in Chief when the measure passed. Colonel Munro "repeated the application without success ; and Colonel Campbell, who, at his request, also urged it, though of the General's family, was likewise refused." The public disavowal made by Colonel Munro is in these words : that "in preparing the Report upon the Tent Contract, nothing was more remote from his mind than to state a sentiment in any respect adverse to the honour, integrity, and military virtue of any portion of the Officers of the Army."—"General Macdowall acted," continues Mr. Elphinstone, "with great coolness and deliberation, very unlike a man wishing to promote discontent or disaffection." "After so long time for deliberation and conciliation, he ordered the Quarter-master General under arrest ; and from that moment we hear the heaviest accusations of the General." Whatever coolness and deliberation he might have used, it was clearly not in view to conciliation ; for he neither communicated the charges to the Government, nor his intention to proceed to the arrest ; neither would he remove the arrest at their request, though Colonel Munro had previously made the public declaration just quoted ; nor offer any acknowledgment for a wanton, indecent attack on Government, in a public letter to Colonel Munro. An observation of Lord Minto's is so apposite here, that we cannot avoid quoting it. "If General Macdowall's not being consulted about the abolition of the Tent Contract, furnished an adequate reason for refusing to a person accused the common privilege of being heard in his justification, in order to avert a criminal prosecution, it was not thought sufficient by General Macdowall to prevent him

" from

"from interfering much more deeply and efficaciously in the
 "affair of the Tent Contract, by placing Lieut. Col. Munro in
 "arrest upon the very accusation, in an earlier stage of which
 "affair he had employed that pretext for suppressing an expla-
 "nation which must have precluded the whole proceeding."
 Was he here "*pushed on from step to step*," as has been said
 for him specifically in one Dissent, and virtually in most of
 them? Or did he, against all dissuasion and remonstrance,
 persist to set a firebrand, just as he was quitting the scene,
 to that mass of combustibles which he so well knew had
 been before collected? The accusations "from that moment"
 brought against General Macdowall, are only of public noto-
 rious acts which the Government could not tolerate or overlook.
 Their having forborne till then to record any animadversion on
 his conduct, though they could not have been ignorant of the
 part he was acting in the Army, especially after his public
 Address to the European regiment at Masulipatam, does not
 look like severity or harshness of disposition. In respect to
 the arrest, the history of that affair must demonstrate that the
 want of conciliation did not lie on their part, and supports the
 declaration made by Government to the Army soon after, on
 the 6th February 1809. "It was the wish, it was the earnest
 "endeavour of the Governor in Council to effect this object,"
 (the prevention of the evils which bringing Colonel Munro to
 trial would have occasioned,) "by every means of conciliation
 "and explanation; but such means having been used in vain,
 "and even repelled under circumstances highly offensive, no
 "alternative remained but that of conveying a specific order
 "for the removal of the arrest."

We have dwelt the longer on this first subject, to shew that
 there is not the least ground for charging any thing to the want
 of conciliation on the part of the Government; but abundant
 proof of a spirit of animosity and faction on the other side; and
 we have wished also to give a specimen of the way in which,
 generally, the Dissents comment on the conduct of the one
 party and the other. The limits we must prescribe to ourselves,

with

will not allow us to follow, with the same detail of observation, the views given in those Papers of the subsequent events, to which we now proceed.

Whilst the affair of Colonel Munro's arrest was yet pending, General Macdowall, on the 23d January, transmitted to Government a Memorial from the Officers of the Madras Army to the Court of Directors, complaining of many alleged grievances—their state of banishment, their poverty and prospects—the abolition of the Bazar allowance—in part—and the Tent Contract—the inequality of their allowances to those of Bengal—and the “Representative of the Army,” the Commander in “Chief,” being deprived of real power, and seat in Council, &c. This last point is urged with peculiar earnestness; and whilst the tenour of the Memorial seems to point to very general redress, they distinctly claim the restoration of the profits of the Bazar fund, and to be placed permanently on the same allowances as the Bengal Army, *as their just rights*.

Memorial from the Officers, transmitted by Gen. Macdowall to Government.

When the Memorial projected in May, which had for its object only the obtainment of Bengal allowances, is compared with the present, it will be evident that some powerful influence must have operated upon the minds of the Officers, to work them up to such an unprecedented representation. It should be observed, that not one of the articles of grievance set forth in it, originated with Sir G. Barlow. It condemns the acts of preceding Governments, ratified by the Supreme Government and the Court of Directors. It claims certain allowances as *matter of right*; it interferes with the prerogative of the Court of Directors, in framing the Civil Government, requiring a seat in Council for the “*Representative of the Army*,” thus incorporating the cause of General Macdowall with their own; and all this is done at a moment (we must be pardoned for repetitions) when the well-known exigencies of the Company had imperiously demanded a very general reduction in their expenditure—when the resentment of General Macdowall against the Court of Directors, and his hostility to the actual Government of Madras, were notorious—and when the Government had been

been deliberately attacked by the arrest of Colonel Munro. And all this was done by *combination*, in direct violation of the general regulation of which the Officers had been reminded by the circular letter of May.

After reviewing the different subjects of this Memorial, and what has been said on them from India, and by the Court of Directors in the letter to Fort St. George*, and after considering the time and manner in which it was brought forward, hardly any one will be disposed to maintain that it is not animated by a vehement spirit of insubordination and encroachment; neither will it be contended that, if General Macdowall's part in this proceeding had been put wholly out of view, the Government could have done otherwise than express a decided disapprobation of it.

* Of 15th Sept.
1806.

But was it possible to consider it distinct from the share he took in it? That share gave a new and alarming aspect to the whole—a combination between the Commander in Chief and the Officers of an Army, to press each other's objects upon the Government—objects not to be yielded—and to endeavour to carry them by a general attack, in violation of all the rules of subordination! And what an appearance does General Macdowall make on this occasion! He who had, but eight months before, as his duty required, though the question was only about *one* of the many points now contended for by the Officers, warned them by a circular letter of the culpability of the course they were pursuing, and the obligation which would attach upon him to bring to punishment the leaders in such a proceeding, he now comes forward, with the most indecent inconsistency and disregard of the duty of his high station, to abet all the discontents of the Officers, and all the accumulations of their extravagant pretensions, “to do every thing in his power *“to protect their rights and redress their grievances;”* and with a plain intimation that the Government will not be *generous* or *just* if it does not also espouse their cause. It was not possible General Macdowall and the Army must not have been aware that the Government could give no countenance to such
a pro-

a proceeding ; that it was a proceeding in defiance of subordination and positive rule, at the most exceptionable time which could have been chosen ; and that General Macdowall's part in it was a flagrant insult to the Government. If the Government had then proceeded to inflict punishment upon General Macdowall, and to expose to the Officers, in General Orders, their highly blameable conduct, they would certainly have still been within the line which the case warranted ; but they took the least notice of this proceeding that was possible, compatibly with their duty. They only stated, in answer to the Commander in Chief, that they could not view the sentiments contained in the Memorial without extreme disapprobation, and that they would suspend the final disposal of that paper until it had been laid before the Supreme Government—no notice whatever is taken of the conduct of General Macdowall. Does this look like harshness, severity, arbitrary, oppressive proceeding, of which so much is said in the Dissents ? Like any desire to irritate or provoke, or to indulge an unconciliatory spirit ? And we wish those who see in the proceeding of the Madras Government, on this trying occasion, a want of conciliation, would be pleased to explain how that principle could otherwise have been applied here. Do they think it could have been hoped, that solicitations on the part of Government, if such could have been used to individuals, would have broken the confederacy ? Or that soothing speeches would have made the confederacy relinquish their objects ? To expect any thing of this sort argues, in our opinion, a most erroneous conception of the very serious nature of this case. This was not, as we have remarked on another occasion, the sudden ebullition of a new impulse ; it was the progress of a long existing principle, now much invigorated by additional influences, and grown to a size truly formidable. The Government seem to have had a just idea of their situation and their duty ; and to have had far higher and better objects than the indulgence of tempers and humours of their own. They appear to have been sensible that there was danger, and that they ought to maintain their legitimate authority with temperate firmness. In our humble judgment, this was

Inquiry how and what conciliation could have applied in the case of that Memorial.

the true line of policy in their circumstances, and will be so in all similar cases in our Indian Governments.

It was the more necessary to act upon these principles at this crisis, because the military faction, though the most formidable, was not the only one the Government had to guard against.

Factions in the Civil branch of the community, which strengthened the insubordination of the Military.

There were also factions among the Civilians which, excited by private and personal interests, were most active in decrying the Government, and exceedingly increased the prejudices against Sir G. Barlow. These, though in themselves less formidable, added to the confidence of the military combination, and derived encouragement from it. With these it was natural that a man taking the line General Macdowall did, should fraternize; and of the fact of his having done so, there is sufficient evidence.

We wished to advert in the briefest manner possible to these collateral circumstances, our main subject being amply sufficient for one paper; but so much reference has been made to them in the Dissents,* and we think with such extreme incorrectness, that it becomes indispensable somewhat to enlarge our view of them.

* Mr. Elphinstone's Dissent, 19 Oct. 1800, Mr. Pattleman's 24 April 1810.

The other Dissents of the latter period dwell on the unpopularity of Sir G. Barlow.

† Letter of 31h February 1810, para. 15.

Rise of the unpopularity of Sir G. Barlow.

We must begin, however, with observing, that it would now seem "unpopularity had accompanied Sir G. Barlow to Fort " St. George." Until we saw Lord Minto's late dispatch † we were not apprised of this fact, nor prepared for it, by the general character which, as far as our knowledge went, a long course of distinguished service in Bengal had established for Sir G. Barlow. The cause, however, is highly to his honour—" a firm and faithful discharge of ungracious and unpopular, " but sacred and essential duties, not sought or relished by " himself; but cast, by circumstances peculiar to the times, on " the period of his administration in Bengal." This is a cause that should endear a servant to his employers; and it more intelligibly accounts for Sir G. Barlow's unpopularity at Madras, than a reason assigned by Mr. Petric—" his wishing, in almost every case,

Observations on Petric's account of that unpopularity.

“ case, to make Bengal the standard or criterion for conducting the affairs of this Government.” * We do not discover on the records, nor have we heard from any other quarter, of any material change made by Sir G. Barlow, in the manner of transacting the public business. It is sufficiently understood; that the earlier establishment and longer practice of the Bengal Government in the exercise of territorial dominion, have given a priority and an advancement to its institutions, which have made them, in very important branches of administration, models to the other Presidencies: and if Sir G. Barlow saw that, in any of the details of business also, the improvements of Bengal could be grafted on the usages of Madras, it was his duty to recommend the change. But the language of Mr. Petrie implies, that he must have attempted this upon a very large scale, and almost immediately after his arrival. “ On general principles,” † says Mr. Petrie, “ respecting policy, finance, commerce, and revenue, an uniformity of system is just and beneficial to the public interests; but in the details of business, and in arrangements which are affected by local circumstances, by physical or moral distinctions, amongst the native inhabitants, it is unwise and inexpedient to attempt it. Experience universally admits, that the laws, customs, forms, and practice, which may be beneficial to one State, Government, society, or people, may form irreconcilable differences, and be radically and totally inapplicable to others.” We are not able to collect very definite ideas from these passages, nor prepared to contend for such a sweeping uniformity of principle as Mr. Petrie approves: and we think that changes in the modes of transacting business, especially changes for the better, among Europeans, need be attended with little difficulty. But what arrangements affected by or affecting the *physical and moral distinctions of the native inhabitants*,” has Sir G. Barlow attempted? The natives have been perfectly quiet and loyal when Europeans were setting them a very bad example. Has Sir G. Barlow endeavoured to introduce *laws, customs, or even forms and practice* irreconcilable, totally and radically inapplicable to the natives and Europeans of Fort St. George? Certainly if his numerous enemies could have quoted instances of this kind,

* Statement p.

† Printed Statement, p. 7—8.

we have no reason to imagine we should not have heard of them: and it would have been well if Mr. Petrie had been more particular, and if there were such innovations, had officially marked his opposition to them, instead of intimating them for the first time in terms vague, but likely to instil prejudice in persons at a distance who, seeing some of the general positions plausible, may likewise infer that there has been reason for the application.

The case of Mr. Sherson, a civil servant, made a party question.

If Sir G. Barlow, from the performance of ungracious duties, brought unpopularity with him from Bengal, it appears that he was unfortunate in being called to a new occasion of the same kind soon after his arrival at Fort St. George. We allude to the case of Mr. Sherson. As the Court have not yet decided upon this case, we should think it premature to give a final judgment upon it, had we completely gone through the two large folios which are filled with the documents concerning it. But Mr. Pattison* having declared it as his opinion not only that, in every case in which Sir G. Barlow and Mr. Petrie, have differed, (and consequently in this,) "Mr. Petrie was right, " and Sir G. Barlow wrong," but having condemned Sir G. Barlow specifically for his conduct towards Mr. Sherson, we deem it necessary to say, that the perusal of the principal papers in this discussion, including the Minutes of Mr. Petrie in defence of Mr. Sherson, has not impressed us with Mr. Pattison's view of the subject. Neither are we prepared to go with him in the peremptory sentence he has pronounced upon the collateral case of Mr. Cecil Smith, which the Court have never hitherto had the adequate means of considering, because a material document relating to it has been lost in the missing ships, and has not yet been supplied. The removal, however, from one department to another, which Mr. Pattison censures, is common in the service, and, for very sound reasons, ought to continue so. The charge against Mr. Sherson was of the most serious nature, and several weighty articles in it appear to remain unanswered. Sir G. Barlow is accused not, as far as we can perceive, of having punished a person positively and clearly innocent, but of proceeding harshly and severely, contrary to the

* Mr. Pattison's Dissent, 24th April 1810.

View taken of it in some of the Dissents.

the rules of the service, against a person whose guilt was not established, but was still under examination by a suit in the Supreme Court. This is Mr. Petrie's view of the case, and according to him, the ground of the unpopularity incurred on this account by Sir G. Barlow with the Madras service. Now, if we understand the matter aright, the question referred to the Supreme Court respecting Mr. Sherson is, whether *he is liable to the Company, for the money embezzled in the Grain Department?* His conduct as Superintendent of that Department, is a distinct question which it belongs to the Company and their Government to decide upon. This affair did not originate with Sir G. Barlow. He found, on his arrival, a Committee sitting to investigate it. That Committee, composed of Madras servants, declared Mr. Sherson guilty. Messrs. Oakes and Casamajor, old Madras servants, composing the majority of the Counsellors, also concurred in that decision. Sir G. Barlow, equally unconnected with all the parties, could apparently have no motive except the assertion of public principle and the performance of public duty. But whilst, at the best, the cause could only be considered as doubtful, the Madras servants have loaded Sir G. Barlow with more odium than ought to have attached to him, if it had indeed been proved that the Committee and the majority of the Counsellors as well as himself had erred in their judgment. This has been signally made the cause of party and faction, and the subject of inflammatory invectives against Sir G. Barlow, of whose tyranny and injustice Mr. Sherson has been held up as the victim. But *we* in this country ought not to adopt the violent language and feelings of party, even if we had decided that the Madras Government had formed an inaccurate judgment on the case: still less ought we to do so now, when the decision of the Court of Directors may yet be, that they have acted as the justice of the case and their duty demanded. And if it should indeed appear, that such has been the conduct of the Government, what would the act of the authorities at home be but a kind of *felo de se*, if they were to join in the reprobation of that conduct? Yet such in effect is the spirit and the language of the Dissents now before us—"arbitrary and oppressive measures, from their
" violence"

* Mr. Elphinstone's Dissent, 29 April 1810.

† Dissent by Sir F. Baring and Sir H. Inglis.

" violence universally disapproved *"—" harsh unconciliatory measures—ignorance of the habits and manners of Madras — the servants are and must be disgusted."† These expressions, and many more of the same tenour in the Dissents, which are quite in unison with the general current of the party accusations transmitted from Madras, (and not the less party accusations because adopted by great numbers,) derive their origin very much from this affair of Mr. Sherson's. But if the Government, honestly solicitous for purity in the exercise of public trusts, should adopt an erroneous proceeding in any case — (a supposition the suggestion of which obliges us to add that it is by no means our intention to imply they did act erroneously in the present instance)—the Court of Directors, were they to join with discontented parties in decrying and reprobating that Government, would, in fact, strike a blow at their own authority.

Proceedings in relation to the Carnatic Debts became the source of violent opposition to the Government.

As Sir George Barlow did not seek this affair of Mr. Sherson's, so, in the next business that occasioned and increased popular ferment, it is evident from the Records, that he was called on to act either by circumstances which originated in the time of the preceding Government, or by public requisition, with which he thought it his duty to comply. We speak of the proceedings relative to the Carnatic debts. The Arcot Durbar was, for at least forty years, a source of corruption and faction in the Presidency of Madras. The baneful influence of its system has continued after the extinction of its power and the transfer of its territory. In disobedience of all the orders of the Company, Europeans became to an immense amount creditors of the Nabobs of Arcot. The liquidation of the bonds granted by those Nabobs occasioned, during their lives, repeated agitations in the Settlement of Madras. Since their decease, new and more violent feuds have sprung from the same source. Their real remaining debts were estimated to exceed the enormous sum of four millions sterling, part, no doubt, incurred for money borrowed, and fair services received. The Company, having acquired the territory, entered some years ago into an agreement with the creditors, for the liquidation

tion of their claims. Commissioners were, in consequence, appointed to act in India and in England for the examination of them. Those in India were to sit at Madras. The Government of that Presidency were desired to afford them all due assistance ; but, to exclude local influences, they were to be selected from the Bengal service. The reputation of the three gentlemen so chosen, for ability and integrity, has remained unimpaired amidst all the storms of faction. When they entered on their office about the month of April 1808, Madras swarmed with forged Nabob's bonds, which seemed exceedingly to have increased from the time it was known that a plan of liquidation was on foot. The claims given in to the Commissioners have amounted in all to 29 millions sterling !

From some questions respecting forgeries, vehement disputes and animosities arose at Madras, and a numerous, active party, was hence formed against the Government. Government, upon the advice of a Committee appointed to enquire into the nature and extent of the forgeries of Nabob's bonds, had, in order to check that practice, directed the Company's law officers to institute a prosecution against Paupiah Braminy, an intriguing native, of recorded infamy; for forging a bond of 46,000 pagodas. This man, on the other hand, accused Reddy Row, a native Officer of character, confidentially employed by the Commissioners for investigating the debts, of the same crime of forgery. The Commissioners before whom this accusation came, carefully examined into the charge ; pronounced Reddy Row innocent, and advised the prosecution of the witnesses in the cause for perjury, by the law officers of the Company ; to which Government assented. Paupiah, however, found means to anticipate these measures, by prosecuting Reddy Row for forgery in the Supreme Court ; and he was abetted by several European creditors of the Nabob. The disputes and litigation that grew out of these circumstances went to great length. For a very brief sketch of the leading facts, as connected with our main subject, but still too long to be inserted here, we beg leave to refer to the annexed paper.*

Brief Review of the Proceedings relative to the Carnatic Debts, in an Appendix.

* Vide App.

Observations on the conduct of Government relative to those Proceedings which created opposition in the Civil community.

† Mr. Petrie's Minute.

‡ Dissent.

The conduct which the Fort St. George Government was led to adopt in the course of these proceedings, seems to have been dictated solely by a desire to support the cause of public principle and public good, the just authority of the Commissioners for the Carnatic Debts, and of the Government itself. We are not aware that the support given to the Commissioners, which Mr. Petrie † calls *unlimited*, was carried beyond the point to which, under existing circumstances, it might fairly have been asked and given. Mr. Petrie has not explained, nor do we see what was *unconstitutional* in the measures adopted by Government for the defence of two persons whom they deemed innocent and oppressed; and that those measures were intended to "influence the juries," or to do any thing more than to bring forth truth, whatever might have been said of their "tendency," there is not the least evidence: that they had no such effect is plain from the event. "Of the severe punishment which," Mr. Petrie says in his *Statement*, "was inflicted on those who concurred in the verdict against the two men," punishment which Mr. Pattison ‡ also inveighs against under the terms of "shameful vindictiveness," neither of these gentlemen has given any proof or particular; nor is any mention made of such a circumstance in Mr. Petrie's *Minute*, which Sir George Barlow had an opportunity of seeing. All we have heard, is, that whilst some persons who served as jurymen were advanced to stations of respectability and advantage, two were, for general impropriety of conduct, removed to stations distant from the Presidency. These facts do not warrant the charge of Mr. Petrie and Mr. Pattison; and we must therefore be allowed to suspend our assent to what appears to us very improbable until it is substantiated.

It is most true, that the interference of Government in these affairs proved very unfortunate to themselves, and to those whom they thought it a duty to support; but that does not at all decide it to have been culpable. Many of those who condemned it, and particularly the leading persons among the Carnatic Creditors, had a direct private interest; and it is not unreasonable to suppose they might have felt the influence of a principle

principle so operative. It has not been insinuated that Sir George Barlow had any private interest, unless to avoid the painful task of conflicting with that of others. To this conflict his sense of duty led him, and, as it proved, at the expence of much of the peace and popularity of his Government.

The opposition of part of the Civil community of Fort St. George, and the prejudices of others against the Government, were, in the course of those judicial trials, carried to a still greater height, and coalesced with the insubordination of the Army, and the factious conduct of General Macdowall, who is known to have been present in the Hall of the Supreme Court at the most popular harangues delivered there, and on the motion of persons in open opposition to Government, was complimented with an address and a service of plate. It is indeed said in some of the Dissents,* and by Mr. Petrie, that in these marks of attention to him, persons of different parties concurred, and that they were paid only on the score of his private and social qualities. But the names which appear to the address, with the exception of two or three military men, who may have had personal obligation or attachment, are clearly of the description just mentioned; and the address itself professes respect to him on account of his *uniform public and private conduct*.

* Of Sir F. Baring and Sir H. Inglis, and Mr. Elphinstone.

The occurrences which come next in order are the Farewell Address of General Macdowall to the Army, and his last General Order censuring Lieutenant Colonel Munro. In the former, *he appeals to the Army against the Court of Directors*, because they had not appointed the Commander in Chief to a seat in Council. Mr. Elphinstone says, he finds no cause to quarrel with the word "Representative" here.† In the Court's Dispatch, however, to Fort St. George,‡ the objectionable nature of the term "Representative" has been distinctly shown; but the seditious tenour of the address is surely cause enough of "quarrel." General Macdowall's Order conveys to the Army a marked and gross insult to the Government, whom it was his duty and theirs to support. The character of these papers is so flagrantly seditious, that though their strongest features have

General Macdowall's Farewell Address to the Army, and his General Order, censuring Lt. Col. Munro for appealing to the Government.

† Dissent, 15th October 1809.

‡ ———, 15th September 1809.

been by many left too much out of view, we shall forbear, as thinking it unnecessary, to insist on this topic. The question we have to consider is, what was the course Government ought to have pursued after coming to the knowledge of the General Order? Mr. Petrie states the question to have been—"shall we proceed on principles of *severity and coercion, or on those of dignified firmness, moderation and expediency?*"* We confess we do not collect any definite meaning from these generalities. The immediate question was not about *severity or moderation*, (as to the application of which terms there might be great diversity of opinion,) but about what, under existing circumstances, propriety and duty required on the part of Government. Mr. Petrie has, in entering upon this subject, observed, "that Government had to consider, not the extent of their power to punish General Macdowall, but to adopt such measures as were best calculated to counteract the effects we apprehended, and to prevent injury to the public interests." He thinks, "any personal severity towards General Macdowall ought to have been cautiously avoided, as what would most certainly increase the agitation in the military mind, and that while the supreme authority of Government was vindicated by the publication of an appropriate General Order to the Army, the General should have been allowed to leave India without any further marks of displeasure." He censures the measures adopted in respect to General Macdowall, "as lowering the respectability of Government:"—"exposing its Councils to the imputation of weakness, undisguised resentments, and an useless unavailing degree of rigour:"†—a view, however, which seems to be contradicted in another place, where he says, "it was observed, that the removal of General Macdowall sufficiently vindicated the authority of Government, and exhibited to the Army a memorable proof that the supreme power is vested in the Civil authority."‡ But he goes on in the place first quoted, to say, that if the Commander in Chief had been allowed to depart without "these useless manifestations of resentment, he and the Order would have been forgotten in the course of a few weeks."§ Mr. Elphinstone, after strongly expressing the same sentiments of the proceedings:

Mr. Petrie's Observations on the conduct of Government ought to have pursued that course; with Remarks in answer.

* Statement, p. 14.

† Statement, p. 14.

‡ Statement, pp. 14-15.

§ Statement, pp. 14-15.

proceedings of Government, says, that "General Gowdie should
 " have been directed to explain to the Army the impropriety of
 " the Order and the displeasure of Government ; and that if a
 " moderate course of this sort had been pursued, he has no
 " doubt the General and his discontent would have sunk into
 " oblivion in a very few days *."

* Dissent, 19th
 Oct. 1869, which
 was six months
 before Mr. Petrie's
 Statement appear-
 ed in London.

These strictures, of which the import seems to be adopted into the Dissents, bring immediately into view the question of *Conciliation*. They are to be found (as we have had occasion to remark with respect to other passages) in Mr. Petrie's Statement, (pp. 14 and 15.) which Sir G. Barlow never, as we are led to suppose, and must again observe, had an opportunity of perusing. In Mr. Petrie's Minute, taken from that *Statement* and laid before the Board, there is not the least appearance of the insinuation which seems to be intended here; that the indulgence of resentment against General Macdowall, or a " vindictive childishness," as Mr. Elphinstone has expressed it, was a leading object with the Government. If Mr. Petrie thought so, it was his duty to have pointed it out on the Records. He forbore to do this publicly, even when freely charging Sir G. Barlow with other things, but he conveys it in a Statement, of which the party impeached has no knowledge. It is saying less than the occasion might warrant to observe, that as such private unsupported insinuations are in their nature no evidence, so they ought, in every view, to be peremptorily rejected. Respecting the measures adopted by Government against General Macdowall, it is not to be wondered at, that the adherents of that Officer should put a very invidious construction upon them; but as such persons were generally the adversaries of Government, it was less to be expected that its " exposing its Counsels to the imputation of weakness " should be a subject of their animadversion. The mere opinions, assertions or insinuations of opponents of any description, proceeding too from private or anonymous sources, are certainly no evidence; and the recorded declarations of Government may be taken as a full counterbalance to them. The Government repeatedly declare, that they have acted from deliberate conviction,

tion, upon public principles of duty and policy: and one quotation from their Letter, written after all the commotions of the Army were subdued, may serve for their own account of their motives, both in respect to the transactions already reviewed, and those yet to be noticed. "We have therefore," say they, "through the whole of these disturbances, been influenced by an earnest solicitude to suppress a course of proceedings so pregnant with disastrous consequences; and we conceived that this important object would be accomplished by a firm but temperate maintenance of our authority, by pursuing measures equally remote, on the one hand, from increasing the spirit of insubordination in the Army, by an appearance of weakness on the part of Government; and, on the other, from exciting discontent by undue severity *"

* General Letter from Fort St. George, 10th Sept. 1810.

Government, that is to say, the majority of the Board, profess to have that object in view, which Mr. Petrie says was the proper one: "the prevention of injury to the public interest." He has nowhere attempted to prove they had not this object; but they certainly differed with him as to the mode in which it should be pursued, and they differed with him also as to the state of the Army at that moment, upon which their reasoning must have, in a material degree, proceeded. Mr. Petrie says, "the discontents of the Army were in their infancy." Distant they probably were from purposes of actual rebellion; but they were not in their *infancy* either as to age or stature. He himself, at the opening of his Statement, gives it to be understood that they were "*considerable*." The mass of evidence produced and referred to in this Paper, has abundantly shown that a spirit of insubordination had been long and deeply rooted, and was advanced to a great height; and Mr. Petrie has said, in another place, that to suspend Colonel Capper and Major Boles was to add fuel to "*the flame which was ready to burst forth in every division of the Army*." Now the removal of General Macdowall and suspension of Major Boles happened on the same day, and Colonel Capper's on the following one. It could not, therefore, have been the removal of General Macdowall, yet unknown, which raised this flame. Mr. Petrie entirely overlooks

looks the whole series of General Macdowall's offensive and criminal proceedings, and speaks of his General Order in terms which are surprising. It was, he says, "*intemperate*," (in another place "*disrespectful*") and "the publication of it *might and probably had a tendency to increase the discontents.*" How different is the language of a conspicuous Military character, Colonel Malcolm, certainly not wanting in attachment to the Army. "General Macdowall," says he, "set an example of that contumely and insubordination which it is his particular duty to repress. There is no calculating the mischief of such proceedings. It is waving a torch over a magazine." Nothing can be more evident, than that the General Order was a most seditious paper, thrown into the midst of an Army prepared by the Commander in Chief to catch the flame it was calculated to kindle. This was not a measure to which he was "*pushed*," and as to which he gave any room for conciliation. He prepared for it in silence, and placed the Government on the defensive. It was a deliberate studied insult to the Government: it taught the Army to consider that power, to which they owed obedience, as the violator of their "Rights:" it was calculated to degrade the Government in the public estimation, in the eye of the Army, and in the eye of all India. It co-operated to this end with the acts and views of those in the Civil community, who had openly arraigned the conduct of Government, and with the spirit of hostility to the same power which had, on a variety of occasions, but more particularly during the administration of Lord William Bentinck, even shown itself in the Courts of Law. There seems to have been a very general concurrence to break through those fences with which the constitution of all countries has invested the supreme power, reverence, respect, and subordination; and a contemptuous insolent spirit was, at that very time, risen to a great height. As a Government that suffers itself to be despised cannot duly perform the important functions assigned to it, the business and the duty of the Madras Government, at this moment, was to repress encroachment and faction, and to maintain order and authority unimpaired. The alternative before them was, whether to do this or to submit to degradation.

Lord Munro's
Letter, 5th Feb.
1810, para. 24.

degradation. Notwithstanding all the circumstances that have been stated, Mr. Petrie thought it would have been sufficient, in order "to vindicate the supreme authority of Government, that an appropriate General Order should be published to the Army." By an appropriate General Order it would seem, that he means an order asserting the authority of Government to do that which General Macdowall's Order had presumed to censure as illegal; that is to say, to pass over the studied intended public insult: an insult respecting a matter, in which the Officers must have had a common feeling with their Commander; and to lay before the same body, whom he had made a tribunal of appeal respecting Army "Rights," the Rights of the Government. In our apprehension, this would have been a most weak, insufficient and ruinous proceeding: it would have been avowing to the Army—"we see ourselves grossly insulted, but we have not resolution to punish the offence:" it would have exposed the Government to the derision of all the malcontents, and held out the prospect of impunity to further insults. To have passed such an Order, through the new Commander in Chief, according to Mr. Elphinstone's idea, would have still more degraded the Government, and placed General Gowdie at once in a state of unpopularity with the Army. These Gentlemen argue as if General Macdowall's act had been an hasty insulated thing, which interested nobody but himself; and, if let alone, would have died out of memory in a very short time. The Government considered it, however, as a daring advance upon many preceding aggressions, in which numbers sympathized; and in this light we also view it. The whole tenour of Mr. Petrie's "Statement" and reasoning leaves it to be inferred, that the character and honour of the Government were out of his consideration, and that he had also lost sight of the duty and necessity of maintaining the rights and authority of Government unimpaired; or took it for granted, that this was to be done by a non-resisting kind of management, by yielding, temporizing, and we presume, conciliation. The example of preceding times, however, leads to a different conclusion. With the impunity which former instances of disrespect and violence have experienced, may be connected the

recent

recent evils ; and Mr. Petrie's short Government of three months could not afford a test of his opinion on this head. But to suppose that the spirit of faction and encroachment is to be allayed by passiveness in a Government, is also contrary to reason and to human nature, by the knowledge of which Mr. Petrie represents himself to have been influenced. In fact, the expedients to which he would have trusted, are the expedients of weakness ; and when weakness is evinced nothing can be maintained, nor can any thing yielded have the grace of bounty or prevent further demands. Mr. Petrie's system might have warded off, for a time, an open conflict between authority and usurpation, but must have ended at last either in the establishment of a military despotism, or a contest for the maintenance of legitimate Government. Adventitious events were fully as likely to strengthen military pretensions as to weaken them ; and it must be a miserable state of Government, which would remain depending on contingencies, while a mass existed of discontent and disaffection, ready to break out at the time most favourable for them.

In our opinion, therefore, the Government would have acted most weakly and unwisely, had it not asserted its legitimate authority. There was no room for compromise, and its conduct stands upon the solid basis of adequate facts and unquestionable principles. Could it even have been foreseen that the punishment of General Macdowall would drive the army into open resistance, the Government would not have been justified in passively submitting to its own degradation. But in this, as in every other measure adopted by Government, it ought to be judged according to the circumstances existing at the time, and not by subsequent events which could not then have been reasonably apprehended.

The review of this affair has served to develop the grand principle upon which the Government professes to have acted throughout the whole of the disputes with the Army ; a principle which we certainly hold to be sound and indispensable, namely, that the legitimate constitutional authority of Govern-

*Grand principle
on which the
Government
acted in the dis-
putes with the
Army.*

*Suspension of
Col. Capper and
Major Boles.*

*Note.—
See S. R. G.
Barlow's
Minute,
which says
the following
thing as to
the suspension
of 1st May, to
which Mr.
Petrie, in
his Minute,
replies.—If
the President
means to say,
that I recorded
no dissent to
the suspension
of Major
Boles, and
the many
others, on
the 1st
May, he is
wrong; but if
his intention
is to infer
from this,
that I concurred
in those measures,
or expressed
no disapprobation
of them, I must
positively deny
the fairness of
the inference.
In various
conversations
with the President,
I stated clearly
my opinion of
the impolicy,
&c. of the measures,
and we were
pursuing "This
is no distinct denial
of Sir G. Barlow's
assertion,
which is pointed
out by Mr. Petrie
did not oppose in
Council." Sir G.
Barlow's argument
requires this to be
understood generally,
and he had
no occasion to tell
his superiors, for
whose information
he wrote, that Mr.
Petrie had not
dissented in writing.
The Records would
show, that Mr.
Petrie's answer is not,
"I did in Council oppose
the suspension of Major
Boles, &c.," but "I did
in various conversations
state clearly my opinion
of the impolicy of these
measures." Besides,
General Macdowall's
order, censuring Colonel
Munro, became known to
Government on the 30th
January; and their
orders for his
dismissal, and the
suspension of Major
Boles, were published
on 31st, therefore
antecedent to these
measures; it would
seem there could be
little room for private
conversation, which,
however, is not the
point in question;
but Mr. Petrie says,
in his Statement,
"It was my duty
to state my opinion
to Sir G. Barlow,
and to use every
argument which my
reason suggested
to prevent the
publication of the
Order: in this I
completely failed."*

This account is certainly considerably different from the one given in the Minute.—Printed Statement, p. 22; and Minute, same publication, p. 26.

ment must, for the sake of the public good, be with temperate firmness of mind maintained entire against insubordination, insult, and encroachment. It will, therefore, be less necessary for us to dwell particularly upon it in considering the subsequent transactions.

The next of these is the suspension of Colonel Capper and Major Boles. It is to be observed, that Mr. Petrie did not oppose this measure in Council*, and in his Minute delivered into the Board, there is no separate specific discussion of it; but in his *Statement*, (pp. 19—23) prepared before the Minute, and since published in this Country, he expatiates upon it in terms of severe censure. To this "fatal" act he ascribes "effects of incalculable magnitude on the security of our power in India," and says, it "has called forth feelings and passions in the military mind, which have shaken the authority of Government to its centre, disorganized and convulsed the Army, brought our most valuable interests into imminent danger, and, he fears, insuperable difficulties." These gentlemen, (Colonel Capper, suspended the 1st February, and Major Boles), were, according to him, "mere instruments of office. They transmitted General Macdowall's Order in the usual ordinary forms: the illegality of the Order which was assumed could not certainly be known to them; and a pernicious example of insubordination, a precedent of incalculable mischief, was introduced."

The sentiments of Mr. Elphinstone on this subject very much coincide with those of Mr. Petrie. He says, "the suspension of Officers without a trial (of which, however, Mr. Petrie admits the legality), could not fail to alarm the whole Army, who thus find themselves dependent on the will of a single individual" (meaning the Governor; the Counsellors being considered

considered by Mr. Elphinstone as ciphers), and in the same paper he frankly shows that he points to the removal of Sir G. Barlow, and the conferring both of the Madras Government and command of the Army upon a General Officer.

Mr. Bannerman considers the suspension as *illegal*, Mr. Pattison as *unjust*. All these gentlemen censure the Government in terms like those already quoted, for want of temper or judgment : and the two former distinctly ascribe to this measure the whole or a great part of the evils that followed.

Declamatory assertion is not the proper matter for argument. Though Mr. Petrie, whom gentlemen seem to follow, ascribes in passages just cited almost every thing to the suspension of those two Officers, he soon after makes the admission above noticed, that *before* their suspension " the flame was ready to " burst forth in every division of the Army."

The merits of this question, on which the Court has long ago passed a judgment, are, we think, fairly stated in Lord Minto's letter of the 5th February 1810 : and our opinion coincides with the view therein given, both of its justice and its policy ; on which last point, in particular, as we have not expressed ourselves concerning it elsewhere, we desire to be understood as holding the sentiments his Lordship has delivered.

The merits of the question.

The main point of inquiry is, whether these Officers acted in an insubordinate, factious spirit, well knowing that General Macdowall's publication was calculated to insult the Government and inflame the Army, and cordially co-operating to those ends? Accumulated facts leave no room to doubt that they were the willing, zealous instruments of General Macdowall in his criminal proceeding, and that, without their co-operation, without their transgression of the rules of their office, his purpose would have been frustrated. It is in vain, therefore, that Mr. Petrie and others plead for these Officers, the implicit obedience due to the command of a superior, and their *merely* trans-

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mitting,•

mitting, in the *usual* way, an order which they did not know to be illegal, and saw no right to question. The legal part of this case, is, in our opinion, settled in the letter from the Supreme Government to Fort St. George, of the 27th May 1809, which completely answers Mr. Petrie's reasonings. The cloak of official duty cannot be allowed to cover faction and sedition. Supposing a man desirous conscientiously to perform his duty as Deputy Adjutant General, and to be at the same time equally conscientious to maintain the respect due to Government, and to preserve the subordination of the Army; suppose even such a man to have a persuasion, (hardly indeed to be conceived in this case), that the principle of military obedience might require him to publish a General Order, so plainly insulting and inflammatory, would he, on its coming to him from a Commander no longer within reach of appeal, instead of carrying it in the first instance to Government, *as the rule*, (besides the circumstances of the case), *demanded of him*, purposely withhold that communication, not wait for the ordinary means of transmission, but use extraordinary means and extraordinary dispatch to circulate it to the different divisions of the Army, before Government could come to the knowledge of it? It is not conceivable that he would. But that Major Boles acted in this way is proved by the various documents * noted in the margin, to which we beg leave to refer. That, though the Government were willing, in the spirit of conciliation, to overlook his misconduct on receiving any acknowledgment of it, Major Boles refused such acknowledgment, and gloried in what he had done, is also proved: and the subsequent Address of the Officers to him is conclusive evidence that they regarded him as a meritorious sufferer for their cause. We, therefore, consider him to have been an intentional confederate with General Macdowall, in stirring up sedition in the Army, to have been a grand link in the chain of causes which produced the rebellion, and with some others who promoted the seditious writings which more immediately led to the actual revolt, to be pre-eminent in the guilt of that lamentable and disgraceful period.

* Military Letter from Fort St. George, 28 February 1810. Governor General in Council to Do. 27 May 1809. Lord Minto to the Secret Committee, 5 Feb. 1810.

The conduct of It is true that the suspension of those two Staff Officers appears

appears to have further inflamed the Army, and precipitated their advances in the course of insubordination and opposition; but where did the blame lie? If, as we think we have already proved, it was the duty of Government to preserve itself from degradation and insult, could they, after having most justly inflicted punishment on General Macdowall, who was no longer on the scene, overlook in silence the confederates in his crime still present, and thus leave it to be understood, that they were resolute only against the absent? It was impossible, without yielding to that seditious contumacy which had brought the question to a trial, whether military intemperance and insubordination should prevail against legitimate authority. They were here again shut out from any fair means of conciliation, and reduced to one alternative. Upon the sound principles of government and of policy on which Sir G. Barlow and his coadjutors acted, they were necessitated to resist the openly factious and persevering contempt of Major Boles. We have no hesitation in affirming, contrary to the supposition of Mr. Petrie,* that, if the Government had pursued another course, its authority *would* have been weakened, and consequences produced fatally injurious to discipline and subordination. But Mr. Petrie's mode of arguing in this case, by supposing that to overlook misconduct would not have been attended with certain specified evils, and, in the case of General Macdowall, that his dismissal did not produce certain specified advantages, seems to us nugatory, and evasive of the essential considerations in question. Supposing that General Macdowall's dismissal "did not intimidate nor convince, did not improve the subordination of the Army, nor strengthen the bonds of obedience," &c.† the measure was nevertheless a measure of duty agreeable to the principles of good government: sedition is not to be cured by leaving it to itself, or by yielding to it. The issue only proves that the disorder was inveterate and progressive, needing stronger remedies. And we must here protest against that principle on which many now argue, and which lies at the foundation of all the Dissents before us, that is, to charge to the Government the consequences which have followed from its maintenance of its lawful authority against military insubordi-

the Government
in respect to Col.
Capper and
Major Boles,
considered.

* Statement, p. 20.

† Mr. Petrie's
second Minute,
p. 30.

nation and arrogance. According to this preposterous and pernicious doctrine, the more audaciously a military body advances in the paths of disobedience and opposition, the more culpable is the Government in resisting them. And such, in truth, is the import of Mr. Petrie's reasoning.

Obliged as we are by a sense of duty to deliver these opinions, we cannot continue our subject without deploring the astonishing excesses to which the Military proceeded. It was in an evil hour indeed, (to use Mr. Petrie's expression) that they first listened to the poisoned discourses of General Macdowall, and the criminal suggestions of those connexions of his, who, after his departure, by combinations and writings, carried on the infatuated work of sedition which he had begun.

Had it even been indisputable that the Government were wrong in their conduct towards Colonel Capper and Major Boles, it did not belong to the Army to enter into cabals, combinations, and remonstrances against that proceeding. They should have left it to those Officers, individually to apply to their superiors, and have patiently referred to their decision. But "from this period," says Mr. Petrie, "to the publication of the Order of the 1st May, including the space of near three months, every day produced some new manifestation of their feeling, communicated in letters, addresses, appeals, and manifestoes. Their writings breathed a spirit of insubordination and resistance, which could only be tolerated on grounds of expediency, policy, or necessity."*

* Printed Statement, p. 92.

Seditious Address of the Officers, to Major Boles.

Among those writings was an Address from the Officers of the Madras Army, to Major Boles, publicly and strongly condemning the conduct of the Government towards him; settling a provision for him to the full amount of the pay and Staff allowances of which he had been deprived; making, moreover, his cause their own, and undertaking for similar mutual support to be given and received by all Officers, who might suffer through any such exceptionable measures on the part of the Civil Government.

Another

Another Paper, still more remarkable, was a Memorial, or more properly, a threatening remonstrance to Lord Minto, from the Officers, in which all their claims, and those of General Macdowall, are repeated; the conduct of the Court of Directors and the Government is censured: the pretension to a seat in Council for the "Representative of the Army," and to an independent Military authority, is advanced; and the Governor General in Council is required, in order to save "the extreme crisis of their agitation," to remove the Governor placed over them.*

Seditious Memorial to Lord Minto, prepared by the Officers.

The principles and views publicly advanced in these Papers, which were circulated for signatures in the principal divisions of the Army, have been, on former occasions, so fully considered, and are indeed so plain, that it must be quite unnecessary to dwell upon them. Military Officers combine to support each other against the Government which they are bound to obey; they form themselves into a deliberative body, to arraign and controul the proceedings of their superiors; arrogate Military rights, independent of what they term the Civil power, and, in the moment of professing loyalty to their Country, revolt against its laws, by requiring the removal of the Governor, placed over them by virtue of those laws, with a threat, that if this is not done, they will proceed to act for themselves.

* Note. — If the Government, in writing of the framers of this Paper, had used the term *conspirators*, as Mr. Pattison seems to say they did ("charging and condemning, *anonymous words with the Address (Government) the Officers therein named as conspirators to subvert the Government*," it does not seem that they could be accused of such *innuendo*.

Mr. Petrie, in his Statement, (page 25) treats the demand of removing of Sir G. Barlow, as a "wild, extravagant, foolish attempt, receiving no support from the general sentiments and approbation of the Army." However the attempt may deserve those epithets, it does not follow that it was not mischievous and highly seditious, had it even been proposed only, as he says, by "some divisions of the Army;" but its being apprehended in terms of menace in the Memorial generally circulated, gives a different view of it.

Mr. Petrie * also observes, "it was satisfactory to find, except in those *intemperate* and highly *disrespectful* productions, there was no apparent disposition shown to disobey or oppose " the

* Statement, p. 29.

“ the constituted authorities ;” that is, we suppose, by open actual resistance to the orders of Government, (of which, however, one prohibited all combinations) ; but we really conceive, that when an Army had gone so far as to circulate seditious writings, in direct opposition to the Government, and in them, besides setting up many other claims, to demand, that in order “ to prevent the extreme crisis of their agitation, their Government nor might be removed,” they were well advanced towards open disobedience ; and that it would have been unwise in the Government to have waited until they had actually arrived at that extreme. These circumstances, therefore, must be considered as very important additions to the “ alarming symptoms “ of an *organized determination to compel* Government to grant “ a redress of grievances,” which, Mr. Petrie * says, had been “ formed in most of the principal stations of the Army,” before the 1st of May ; though such a determination, doubtless, involved in its principles every other evil, supposing Government not to submit to their demands, which would have more certainly led to its final subjugation.

• *Statemehl*, p. 95.

Mr. Petrie's account seems to import, that matters were come to extremity before the 1st of May. Government certainly thought that disaffection and sedition had spread so far, as to require immediate measures for their suppression. What hope remained on the side of Government, for rational or honourable conciliation, we cannot discover ; but General Gowdie's circular letter, of the 5th March, to the Commanding Officers of Divisions, calling on them to suppress all improper addresses and memorials, and his other circular letter on the subject of the address to Major Boles, were intended to prevent the progress of sedition, and the necessity of interference on the part of Government. These strong calls from the Head of the Army had no material effect. The address to Major Boles was forced upon the notice of Government. It was an act of open sedition. The memorial to the Governor General, a still more desperate measure, had been more concealed ; and the decided support which Lord Minto was found to give to the proceedings of the Madras Government, stopped the progress of it ; but,

as that Government very justly reasoned, those Officers who had been most active in framing and circulating that dangerous paper, "which had not failed of its design from any want of boldness or malignity on their part, could not be considered as any longer fit to be intrusted with the command of men and arms, which they insinuated the intention of eventually turning against the State."

These principles led to the suspensions of the 1st May, which were confined to those Officers of superior rank, few in number, who appeared by evidence, in our judgment sufficiently conclusive, and of which, though Colonel Bannerman * has arraigned it, no part has, to our knowledge, been disproved, to have been most active in the formation and circulation of the Memorial. For the address to Major Boles, Captain Grant, who had ostentatiously proclaimed himself to Government a subscriber to it, was the only person who suffered suspension from the service. The incontrovertible grounds of these proceedings were explained in the General Order announcing them. The Memorial, it is there said, "is not more hostile to the authority of this Government than to the first principles of all government. It maintains opinions directly adverse to the Constitution of the British Service, and is calculated to destroy every foundation of discipline, obedience, and fidelity." And the address to Major Boles is justly said to be "incompatible with the military character, and repugnant to the fundamental principle of military discipline and government."

Suspension of certain Officers, on the 1st May, 1809.

* Dissent of Col. Bannerman.

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To these proceedings, the accusations so frequent in the Dissents,† of arbitrary and violent conduct in the Madras Government, probably in part refer; but they are particularly arraigned by Colonel Bannerman as "oppressive," and by Mr. Pattison as "unjust and impolitic;" as "setting fire to the match already prepared by preceding aggravations," &c. Surely, gentlemen who accumulate such terms of condemnation on this and other acts of the Madras Government, do not mean that the seditious proceedings which were assigned as the grounds of

View given in the Dissents of this proceeding.

* Particularly those of Sir F. Baring and Sir H. Inglis, Mr. Robinson, Mr. Pattison, and Col. Bannerman.

the measure of the first of May were not realities, or that the Government should have taken no notice of them, but have passively suffered sedition to advance from one step to another? They have blamed the course pursued, but no one has intimated what was to be done in such an alarming conjuncture, excepting indeed to appeal to a Court Martial; to which point we shall presently speak. It is in vain to resort here to the word *conciliation*, unless concession (and concession at the very worst time) be really meant. It is sufficiently obvious that nothing else would have produced even a temporary calm.

It is stated, as a distinct ground of objection, by the two gentlemen just named, * that the Officers accused were punished without a trial, which, according to the constitution of the Army, they ought to have had before a Military Tribunal. To that proceeding, of which there will hereafter be occasion to take further notice, the same objection has been urged in other Dissents. We must own the necessity, and therefore the propriety, of the measure adopted by Government, appears to us very clear. The martial law seems to pre-suppose the great body of the Military, by whom it is to be administered, to be in a state of loyalty and subordination to Government, and prepared to punish the violation of those duties; but the Legislators could not mean, nor can the safety of any Government admit, that, if the military body in general are engaged in a course of measures hostile to the State, it is to be left to those so confederated to determine upon the guilt or innocence of each other. Common sense revolts at this idea, which would require an adherence to the form, at the sacrifice of the substance of justice. Whenever the Military body, which is formed only to serve and protect the state, shows unequivocal symptoms of a disposition to resist or controul it, the State must have a perfect right to remove that body from its service; and the same in respect to individuals, without even, in their case, resorting to a Court Martial; and still less is this resort to be expected when the offenders, from the generality of the offence, can hardly be referred to judges who may not be parties in the same guilt. This, we presume, is the practice in all countries; and

* Dissent by Col.
Bannerman.
Ditto by Mr.
Fallsion.

The question
concerning the
trial of seditious
Officers by
Courts Martial.

if the propriety of it needed any illustration, we have only to look at a large body of the Madras Officers soon after, publicly demanding of Government that Lieutenant Colonel Innes, who had maintained his loyalty in the command of Masulipatam, and had been deposed by the revolted Officers of that garrison, should be brought to a Court Martial for his general conduct there. In circumstances such as these, in which the Madras Government and the Madras Army were placed, it is entirely probable that the demand for proof would have been unusually rigorous, the means of furnishing it, even in cases of certain delinquency, unusually difficult, and the delay great; so that a reference to Courts Martial in such a crisis of extraordinary agitation and resistance to Government, was, in the opinion of the Governor General, more likely to produce triumph than restraint to sedition; and the Madras Government felt itself reduced to the necessity of opposing its own power to that of the malcontents, or to expose to subversion that authority with which it had been entrusted.

Decided friends as we are to freedom of opinion justly exercised upon public subjects, we cannot on this principle help thinking, that, on such affairs as we are now discussing, affairs remote from the observation of persons here, considerable attention is due to the judgment of the Indian Governments. Sir G. Barlow had the strongest motives, personal as well as public, to deter him from entering needlessly or wantonly into those scenes of peril in which he has been an actor. He had a much greater stake depending, and much nearer opportunities of judging of persons and things than any of those who, in this country, sit in judgment on his conduct; and every authentic information, public and private, satisfies us that those who conceive him to be of a rash and violent temper, utterly mistake his character. Mr. Oakes, one of the Members of the Madras Council, is known to be a man of ability who thinks for himself, and Mr. Casamajor has the reputation of an honourable man and a good servant of the Company. The unanimous judgment of the Bengal Government too, so near the scene of action, and having so deep an interest in it, is surely entitled to

Observations on the proceedings of Government on the 1st May 1809.

regard.

Construction given in one of the Dissents to the commendation bestowed by Lord Minto on Sir G. Barlow; and Observations thereon.

• Sir F. Baring and Sir H. Inglis.

regard. No responsibility can well be greater than Lord Minto's in respect to the measures that have been pursued by the Fort St. George Government. He has given them his cordial approbation, has defended them by his reasonings, and bestowed the highest commendations upon Sir G. Barlow. One of the Dissents * indeed takes the extraordinary liberty of advancing, " that Lord Minto's opinion as well as his conduct, in upholding, and applauding Sir G. Barlow, *must be considered as purely political* ; as what, in his opinion, would produce the " best possible effect on the mind of the Army." But Lord Minto, in all his letters to the Court of Directors and to the Secret Committee, in those written from Bengal as well as at Madras, all of them unknown to the Army, has expatiated, in still stronger terms, and with evident pleasure and cordiality, upon the merits of Sir G. Barlow, and has warmly recommended that those merits be distinguished by public honours and rewards. By such glosses as this, all facts and characters may be explained away. But if the authors of the Dissent think that the Governor General, " surrounded by a mutinous Army, acted " wisely in holding up and applauding Sir G. Barlow, as what, " in his opinion, would produce the best possible effect on the " mind of the Army," may we not ask whether they think it also wise, whilst it is too well known the ferments in that Army have not yet subsided, and are likely to be excited again by auxiliary agitations in this country ; whether they think it wise in *Directors* to take a quite contrary course, in written opinions intended to be made public, to vilify and degrade Sir G. Barlow and his measures ? Will this likewise " have the best possible " effect on the mind of the Army," or the tranquillity of the country ?—The same Dissent represents Sir George Barlow himself as dealing in a way still more extraordinary with his own character, as having " broadly stated to the Madras Army," when in the height of rebellion, " that every measure " (meaning obviously every measure characterized in the Dissent as severe, oppressive, &c.) " he had adopted, from the first order " respecting General Macdowall to the unhappy expedient of " the 26th of July, *had directly and immediately been the cause* " of the increased discontents of the Army, their intemperate

“ remonstrances, and subsequent acts of violence.” The scope of the able Paper * here alluded to is directly contrary to all this. It sets before the Officers the long series of their seditious proceedings, with a view still to bring them back to reason, loyalty, and obedience. It refers to various means used by Government in the way of counsel, admonition, warning, moderation, and forbearance under strong provocations, to lead them to a sense of their duty, and of the danger of the course they were pursuing. It expresses deep regret that these measures of moderation, these repeated and urgent appeals to the discipline, duty, national attachment, and professional honour of the Company's Officers proved ineffectual; that seditious Memorials still continued to be circulated, and sentiments of sedition to be openly declared in many parts of the Army; and then it goes on to state “ that the further forbearance of Government would have “ encouraged the progress of these evils; that a course of “ explanation and exhortation had been pursued in vain, and it “ became imperiously necessary to check, by a salutary example “ of punishment, a spirit of insubordination that threatened “ the most dangerous consequences to the prosperity of the “ Empire.” This example (of the 1st May) confined still to a small number of leading offenders, did not arrest the progress of sedition, which equally resisted measures of forbearance and punishment. A systematic course of aggression and insubordination, a determined spirit of revolt at length forced the Government to adopt decided measures for the support of its own authority; having only the alternative of pursuing this course, or being guilty of the most criminal dereliction of duty in confirming the evils of sedition and Mutiny, by submission to a body of men placed by law under its authority.

* General Order,
18th August 1800.

Such is the tenour of this paper, still intended to bring the Officers to reflection: but the Dissent would pervert the whole, to place to those measures of prevention, which the aggressions of the Officers forced Government to adopt in self-defence; measures entirely approved by the Supreme Government, and known to the Army to be so (though the Dissents in general quite overlook these material facts) it would place to them those

† Dissent of Sir F.
Baring and Sir H.
Ingalls.

evils produced by the inveterate, persevering spirit of sedition and revolt. We hope to be pardoned in some repetition for the sake of illustrating this method of judging of the conduct of Sir G. Barlow. It extends to small things as well as to great. We are told by gentlemen who have not been within 12,000 miles of Sir G. Barlow during all these transactions, "that, " excepting in a very few favourites, in every look and every " gesture he perceives treason and rebellion."

Further Observations on the Government proceeding of the 1st May.

The preceding observations may serve at the same time to convey our sentiments of the measure of the 1st of May, to which stage of the history we now come. It appears to us that Government then met an evil which would have become greater by delay, and that they judged wisely in taking this resolution.

The Government might have been run down, and made contemptible and inefficient merely by the continued unpunished licentiousness of the disaffected. They would have rendered more easy the prevalence of military usurpation, the immediate consequence of which would have been the abrogation of all measures of retrenchment, probably the establishment of all the extravagant claims of the Army; and the restoration of a constitutional paramount authority to the Civil power would hence have become a work of great difficulty. It may therefore admit of doubt, whether the measure adopted on the 1st of May was not deferred too long, since, whilst Government was exercising forbearance, the spirit of sedition was becoming stronger. It evidently left no means of fair conciliation on the part of Government, which, on the contrary, states expressly, "that the " General Order of the 1st of May could not have been delayed " without hastening the arrival of an extreme crisis."

It seems to have retarded that crisis; but the Hyderabad Subsidiary Force, rejecting the compliment paid to their conduct in the General Order of the 1st May, circulated on the 18th of that month an address to the Army, declarative of their approbation of the seditious proceedings which had been adopted by the disaffected Officers, their condemnation of the acts of the Government,

Government, and their adherence to the measures of the rest of the Army. Colonel Bannerman * says, " the local effect of " this measure, the Order of the 1st of May, is distinctly " marked upon our records. The portion of the Army, highly " complimented in that Order for its allegiance and fidelity, " felt the ties of allegiance dissolved by this act of extreme " oppression, flew at once into rebellion, and instantly de- " manded its repeal."

* Dissent.

Other Objections to it in the Dissents noticed.

Having already, as we think, vindicated the act and the non-reference of the conduct of the accused Officers to a Court Martial, the only objection urged by Colonel Bannerman against it, we must be permitted to say, that the " local effect of the " measure " seems to us unhappily urged, as either proof or illustration of the measure having been wrong. It is another instance of that unjust mode of arguing against which we have before protested; charging upon Government, acting in defence of its own legitimate authority, the rebellious acts to which the Officers proceeded. Supposing even the Government to have gone beyond its proper powers on this occasion, was there not an appeal to the common superiors of the Government and the Army? Were the whole body of Officers warranted to combine upon this occasion to make themselves judges of the case; to judge the ties of allegiance, even of those who did not suffer dissolved; to make war against the Government, and then to dictate the repeal of their act? We do not say that Colonel Bannerman means to approve of these proceedings; but we must be of opinion, that to introduce them in the solemn judgment of a person in authority, apparently for the purpose only of criminating the Government, and in language that may be thought even apologetical, without expressing any feeling of that abhorrence which their enormity ought to call forth, is liable to very strong objection. The same honourable Director has connected with this article a sweeping condemnation of the measures of Government, recited in their General Order of 12th August, which he terms " a series of acts of despotic oppression; "—" a systematic course of aggression, and of aggravated indignity." retorting thus upon the Government the

• language

language used by it with respect to the Officers. Assertions of this criminating nature, utterly unsupported by proof, introduced long after the general subject had been considered, and applied to measures which all the Indian authorities abroad and at home have approved and sanctioned, appear to us of a most injurious tendency, and entitled to very serious disapprobation.

*Progress of the
Revolt.*

Government took no immediate step upon this proceeding of the Hyderabad Force. It had a powerful effect on the body of Officers; and the example was very generally followed. "Committees of Officers were established at all the military stations. They assumed the exercise of the highest power, and commenced an active correspondence with each other, for the purpose of forming and combining their plans of revolt." The ostensible objects of the disaffected Officers were a redress of alleged grievances (none of which had the appearance of foundation, unless the question concerning the distribution of places of emolument between King's and Company's Officers, which was in reference to the Court of Directors) the obtaining of Bengal allowances, the dismissal of unpopular Officers from their official situations, and the restoration of Officers who had been removed from stations, or suspended the service. The Government of Madras, however, say, "there is every reason to believe those projects were considered only as preliminary to the accomplishment of more extensive and dangerous views, particularly the subversion of the present Government." The Hyderabad Force, emboldened by impunity, on the 15th June transmitted an Address to the Government, with 186 signatures; in which, after stating the impending danger of a separation of the Military from the Civil Authority, and of the loss of the country; and declaring that the whole Army is united in one cause, they require that the Orders of the 1st May might be rescinded. They had first inserted in their paper an intimation that the scenes of Vellore might be re-acted with increased effect; but that intimation was afterwards omitted. This Paper of course became known to the whole Army.

On the 25th June the European Regiment at Masulipatam
mutinied,

mutinied, and Colonel Innes was put under arrest by Major Story, the leader of that revolt. The revolted Officers received from most of the stations of the Army applause, and promises of effectual support.

Lieutenant Colonel Malcolm, an Officer of known talents, and very popular with the Army, was sent to take the command of Masulipatam, in the hope that he might be able to induce that garrison to return to a sense of its duty. He was with difficulty admitted by the Officers, but found it impossible to restore them to obedience, or, as he thought, to avert the most dreadful calamities, unless all the obnoxious demands in which the Officers of the Army were combined and pledged to each other, were granted.

On the 5th of July the Force of Jaulnah prepared an Address to the Governor General of such an intemperate nature, that Colonel Montresor, their senior Officer in that quarter, declined to forward it.

On the 5th of July also, the Officers of the Hyderabad Force, in a body, refused to permit the march of a battalion which Government had ordered to proceed from that station to Goa, because, “ *having united among themselves, and with the whole Army, they deemed any attempt to divide them destructive of that Resolution; and that the assistance of that battalion might soon be necessary to them, and their attachment they were assured of.*” Orders issued on the 9th of July, for the march of three battalions from Travancore, and for the march of a detachment from Seringapatam to Bangalore, were also disobeyed.

On the 21st July, the Officers at Hyderabad presented what they called the *Ultimatum* to Government. They required the public repeal of the Order of the 1st of May; the restoration of every Officer who had been removed or suspended; the trial of Lieutenant Colonel Innes* for his general conduct at Masulipatam; the removal from office of the Officers of the General Staff;

* Note. — *Who had adhered to the Government.*

Staff; and a general Amnesty for the measures which the Officers of the Coast Army had adopted. On the 26th of July, a detachment ordered by Government to march from Seringapatam to Bangalore, refused to move. This might have been known at the Presidency about the 30th.

Conduct of the Government upon the rebellious proceedings of the Officers.

The open resistance or revolt of considerable portions of the Army—the combinations which united with them, in sentiments and views, other divisions of the Army—the failure of Colonel Malcolm's mission to Masulipatam—and the intelligence received from various quarters, reduced the Government to the alternative of either subduing the Officers by force, or making to them the concessions they demanded—"Concessions which," we concur with the Madras Government in thinking, "would have effectually confirmed the spirit of sedition, have established an ascendant power in the Army, uncontrollable by the Government—would have strengthened the presumption, contempt of authority, and confidence in their power, already too prevalent in the Army, have made that body independent of the law; and, if it had not actually caused the subversion of the Government, would have reduced it to a degree of weakness which would have led to the most fatal disorders." Was conciliation practicable here? It appears that Government still thought of it, but thought of it as out of their reach, in which we must agree with them. "Any attempt even," say they, "for the purpose of conciliation in the existing state of things, would have been productive of equally pernicious effects. To have endeavoured to conciliate when the conduct of the Army demanded signal punishment, would naturally have produced the conclusion, that our measures were dictated by a consciousness of our weakness, and would have borne the appearance of submission to the outrageous conduct and menacing language of the Army. These considerations derived force from the peculiar nature of the demands of the Army—the repeal of Orders for the punishment of Officers who had committed great offences,"* &c.

* General Letter to Fort St. George, 10th Sept. 1800, page 80.

Matters could not remain in the state they were in, and the Government, having maturely deliberated on the whole of their situation and duty, resolved to avoid concession, being confident they could, by a due exertion of authority, maintain unimpaired the just rights and powers entrusted to them, and that this course "would involve no consequences which were not infinitely less dangerous to the national interests than those which would have inevitably resulted from submission to the menaces of a revolted Army." In our opinion the Government judged wisely, and displayed great firmness and vigour, under very trying circumstances, both in the resolution they adopted, and in the measures with which they followed it up. One of the first of these was to remove, as far as should be found practicable, disaffected Officers from command; to explain to the native troops the ground of this proceeding: and to impress upon them, at the same time, the paramount duty they owed to the Government. The particular precautions and directions given for carrying those Orders into effect, may be seen in the Fort St. George General Letter of the 10th September 1809. To accomplish these objects, the Officers commanding the principal Divisions of the Army were, on the 26th July, first instructed, after suitable explanations, to require from the European Officers under them, a declaration of fidelity to the Government, according to the tenour of their Commissions, and to remove from the immediate execution of duty those Officers who should decline such a declaration; their ordinary allowances being still continued to them. The commanding Officers were next enjoined to make the proper communications to the native Officers.

*Declaration of
obedience to Government,
proposed to Officers
on the 26 July.*

In the circumstances in which the Fort St. George Government were placed, no measures could, in our opinion, be more natural, judicious, and unexceptionable than these, and no objections have surprised us more than those advanced against them. "A Test," says Colonel Bannerman †, "pre-supposing disaffection and seditious combination, was consequently useless if the supposition was true,—a gross injury and insult, if unfounded, and productive of no consequence but the sub-

*Objections stated
in the Dissent
to that
measure, and
answ.*

† Dissent, Objection 5th.

“ version of discipline by the removal of the Officers from their
 “ men, and the further excitements in the native troops of agi-
 “ tations.” He adds (very truly), “ that the public Records
 “ do not contain the details which might be required to establish
 “ this objection;” but says, “ the Government Gazette exhi-
 “ bits only 150 names as taking the Test, out of a body of
 “ 1,300 Officers;” and then complains of the “ absence of
 “ public documents,” denouncing the Government “ for call-
 “ ing on the Court to decide on its garbled statements, and
 “ withholding the series of documents which would have led to
 “ opposite results and conclusions.” The same objection as
 to the number of signatures is made by Sir F. Baring and Sir
 H. Inglis † they speak also of “ the unhappy expedient of the
 “ 26th July,” and say, “ the bond of union between the
 “ Officers and Sepoys has been too roughly treated for such
 “ delicate machinery.” Mr. Elphinstone § is afraid “ Sir G.
 “ Barlow has ruined and disorganised the Army”—he has
 shown the native troops, says that honourable gentleman,
 “ our weakness and their strength—has placed the European
 “ Officers in a disgraced situation before them,” &c. We shall
 briefly observe, in answer to these objections, that the propo-
 sal of a Test did not, as Colonel Bannerman assumes, suppose
 universal guilt or universal innocence, but a seditious combina-
 tion of many indiscriminated individuals; and that as in such
 a case nothing can be more obviously just and proper than to
 distinguish the guilty from the innocent, so it cannot be an
 insult to any man to desire that he will do what is his duty, that
 is, to declare himself. Whilst the public documents were not
 arrived, Colonel Bannerman could not know that those sent
 home were “ garbled,” nor that the full series would have led
 to opposite conclusions. The documents in regular series are
 since come; they lead to no opposite conclusions. Those first
 received prove not to have been “ garbled;” the implied
 intention, therefore, to withhold the Records is found to
 have had no existence, and the delay to have been owing to
 other causes.

‡ Dissent of Sir F.
 Baring and Sir H.
 Inglis.

§ Dissent of 24th
 April, 1810.

If the number of Officers who signed the Test or Declaration

of

of Obedience was comparatively small, (though we doubt the accuracy of that stated in the Dissents) of so much greater importance was the measure, since the speedy effect of it under the overawing presence of King's troops was to remove the disaffected Officers from all the centre and southern divisions of the Army; from the corps in the ceded districts; in Travancore, Malabar, Canara, and Bangalore: and the native troops at all those stations professed their loyalty and attachment. These effects were the main objects of the measure; and they disconcerted at once the counsels of the seditious Committees, and signally contributed to render the cause of legal authority triumphant. Nor could Officers reasonably complain of not being entrusted by Government with an authority they would not promise to use in its support. With respect to the native troops, if inconveniences arise from the appeal of Government to their loyalty, those inconveniences are wholly to be charged to the Officers who rendered it necessary for Government to make that appeal. No proposition can be more intolerable than that the Officers should, on any pretence whatever, be allowed to retain a power of deluding or seducing the men placed under their command, into rebellion against the Government that pays them, and to whom they owe allegiance. No evils apprehended from undeceiving the men could approach to this: and the example of the great Lord Clive, with whose judgment and experience it can be no disparagement to the objectors to say that their's are not to be compared, ought to be decisive on this point. In the mutiny of the European Officers in 1766, he not only informed the native troops of the true state of the case, but employed them in seizing and putting some of the Officers in confinement; and none of the evils predicted from the late milder proceeding followed. The measures of the 26th July were, in a word, calculated both to uphold the just authority of Government and to prevent the horrors of a civil war.

But it must be concluded they were among those which, Mr. Petrie says, in his *Minute*, he represented in conversation with Sir G. Barlow to be, in his opinion, "inapplicable, hazardous,

Mr. Petrie's Account of the points in difference between him and Sir George Barlow, and examined.

" and totally disproportioned to the object and to the magnitude of the emergency." It may be proper, therefore, at this advanced stage of the transactions, to attend to the observations he has recorded. " I thought," says he, " that, rather than conciliate the Army, we were endangering the security of our Indian Empire. To Sir G. Barlow it seems to have appeared that, almost under any circumstances, concession must be the greater evil; whereas to me it seemed a feather when placed in the scale against the revolt of the Army, a civil war, and the probable loss of the country." " He (Sir G. Barlow) thought it better to risk an immense stake, an Empire, than rescind an Order. I wished to yield to form rather than endanger the substance."

In the contrasted view here exhibited of the opinions of Sir G. Barlow and Mr. Petrie, we think there is a misrepresentation essentially unjust. It is evident from the whole current of the public documents from Fort St. George and Bengal, that Sir G. Barlow, the majority of his Council, and the Government General, did not mean to contend, nor did actually contend, for punctilios or forms, but for interests of the highest importance; that the question with them was not between " *hazarding an Empire and rescinding an Order*" or " *yielding a form*," but between surrendering the lawful authority of the Civil Government and resisting military domination; that they did not maintain concession *under any circumstances* to be the greater evil, but *such concessions* as were required, *under the circumstances in which they were required*; and that the Government acted not as it did " *rather than conciliate*," or in the belief that they were *hazarding the Indian Empire* by resistance, but because they saw no means of conciliation, except concessions which would have exposed that Empire to the greatest dangers.

We cannot allow to Mr. Petrie, that the refusal of concession or the probable loss of the country was the alternative Government had before them: and we think, moreover, that Mr. Petrie has taken for granted a proposition of immense importance, not

to be conceded without proof, of which an atom has not appeared—that, “in yielding” (what he calls) “the form, the substance would not have been endangered.” After clearing away these incumbrances, the plain question comes to be, whether, under a comprehensive view of all circumstances, resistance was to be chosen by the Government rather than concession? We have already given the reasons which have determined us to vote with all the Indian authorities in the affirmative.

The plan of this Paper does not require us to trace minutely the progress of the rebellion; and we are glad to be exempted from the afflicting details of open revolt in different corps in the Army; of the seizure of public treasure in various places; of one actual conflict in the field, to which the Company's Sepoys had been led by the deluding information of the Officers, to the sacrifice of many lives; of the unworthy arts used by the Officers to keep the Sepoys ignorant of the real state of things, to prevent the Proclamations addressed to them by Government from reaching them;—to persuade them that Government entertained designs against them;—and of the operations which the revolted Officers either attempted or seemed to have in view against the public authority. It is a more pleasing task to advert, though briefly, to the system of measures * by which a wise and energetic Government, unappalled by the most threatening dangers, crushed a widely extended rebellion before it could bring on the horrors of a civil war.

*Progress of
Rebellion—*

Fort St. George
General Letter, 10
Sept. 1800.

• Fort St. George
General Letter, 10
Sept. 1800.

The Orders of the 26th July, so much decried by some, had the effect of securing the services of all the native troops to the southward of the river Kistnah, with the exception of the garrison of Seringapatam. The King's troops, to their lasting honour, had been stedfastly loyal; and reinforcements had been obtained from Ceylon and Bombay, which considerably increased their numbers. The only troops in rebellion, which could oppose resistance in the field, were those at Hyderabad, Jaulnah, and in the northern division of the Army. For many reasons it had become important to reduce these troops at the earliest moment:

*And of the
measures oppos-
ed to it by Go-
vernment.*

moment ; and very able and powerful arrangements were made for this purpose. A public Proclamation, addressed to the native troops on the 3d of August, at length made an impression on the corps at the stations just mentioned, where the Sepoys had hitherto been kept in ignorance and delusion. The choice of Colonel Close, whose weight of character is so great among the Natives and Europeans, to command at Hyderabad, and his intrepid and masterly proceeding during the one day, (the 3d of August) in which the Officers allowed him to exercise his command, had a very material effect in opening the eyes of the Sepoys, to whom, at the head of the line, in the midst of appearances of hostility, he explained the real state of things; and their duty and interest to remain loyal to the Government. The consequence was that, in a few days after, the native troops at Hyderabad expressed to their Officers their determination to adhere to their allegiance to Government : and this occurrence, with the movement of a large force towards Hyderabad, and the declared determination of Government to maintain their authority, presented to the view of the Officers their desperate situations. Hence the resident at Hyderabad, in a Letter to the Governor's Military Secretary of the 6th August, states, that the Officers saw nothing but ruin from persevering in their criminal course, and that, in his opinion, a general amnesty would induce them to return to their allegiance.

*Submission of
the revolted Of-
ficers.*

In reply, the Resident was informed that there was no intention on the part of Government of listening to any terms but unconditional submission to authority ; and, on the 11th August, (probably before the answer to the Resident could have reached that place,) all the Officers of the subsidiary force at Hyderabad spontaneously signed the Declaration of the 26th July, and offered their unconditional submission. This example was followed by the forces at Masulipatam, Seringapatam, and Jaulnah, which completely terminated the revolt.

Their submission.

It has been industriously asserted and propagated, that the submission of the Officers was entirely owing to the approach of Lord Minto to Madras.

Mr.

Mr. Petrie, in his Statement, (pp. 60—64) has laboured at great length to establish this point, and has taken much credit to himself for predicting the good consequences that would result even from the knowledge of Lord Minto's *intention* to repair to that Presidency. After setting forth the enormities committed by the revolted Officers, as so many evidences that the system pursued by Government was wrong, and to show that what he is pleased to call "*intimidation and coercion had completely failed, and that, by a perseverance in the same system, every reflecting mind trembled for our Empire in the East,*" he adds—"In this crisis, on this volcanic ground, the Army received the communication of Lord Minto's notification to the Army in Bengal, and of his intention of proceeding to Madras, with enthusiastic pleasure. Every measure of violence, which had been either adopted or contemplated, was immediately abandoned. The force at Hyderabad and the garrison at Masulipatam, who had been the first to resist the orders of Government, took the lead in returning to the allegiance of duty and obedience. Their submission was unconditional, but to the Governor General, and not to the Governor of Madras. Their example has been every where followed."

not owing to the approach of Lord Minto to Madras—

*as Mr. Petrie
Mr. Petrie's
Statement, p. 46.*

It is not to be wondered at, that gentlemen who adopt the views and representations of Mr. Petrie, should follow him in this instance. "We are distinctly of opinion," says Sir Francis Baring and Sir Hugh Inglis,* "that the sword of revolt was sheathed when the Governor General announced sentiments of moderation, justice, and lenity, and not less than 30,000 men who were then in opposition to Government, surrendered at discretion." This is a considerable improvement upon Mr. Petrie; for the men, probably in all not more than 12 or 15,000, were not "in opposition," but in the dark; and, when they discovered the truth, refused to oppose Government. "All Sir George Barlow's firmness," says Mr. Pattison, "could not have saved him, had not Lord Minto's approach led to a hope in the Army,"† &c. "The Officers," according to Mr. Elphinstone, "had shown unequivocal signs of a return to their

*and the Dissents
affirm.*

** Dissent of Sir
F. Baring and Sir
H. Inglis.*

*† Dissent of Mr.
Pattison.*

" their duty, and a desire to submit their claims to the Governor General, who might be soon expected." This is partly the language of Mr. Petrie's Minute—" The Army had then " manifested unequivocal proofs of returning subordination and " obedience." But let it be observed, that Mr. Petrie refers here not to Lord Minto's approach, but to the time at which it was proposed to him (Mr. Petrie) to sign an Address to Sir George Barlow—(and here too it will afterwards appear that he was mistaken)—Mr. Petrie, in his Minute (laid before the Board) does not say one word of effects produced by Lord Minto's approach, on which he so much enlarges in his *Statement*; a paper, which, as we are now about to take leave of it, we must declare to be, in our opinion, of a very mischievous tendency, but of which the publication is, we conceive, to be ascribed to his friends rather than to himself.

Nothing indeed could be more adverse to Mr. Petrie's whole theory and conduct, respecting the commotions in the Madras Army, than the triumph of the system pursued by Sir G. Barlow. It is not unnatural, therefore, that he should be disposed to ascribe the successful result to another cause. But a recurrence to facts will show that they are at irreconcilable variance with his representation.

In the first place, the Letters of the Bengal Government of the 28th February and 27th May 1809, which were published to the Army of Fort St. George, and in a style admonitory, authoritative, and impressive, fully set forth Lord Minto's sentiments of the insubordinate proceedings of the Officers; and the motives of duty and obedience which ought to regulate their conduct, had not the effect of stopping the progress of sedition among them: nor had his more pointed private communications to some of the suspended Officers,* which must probably have been made known to the Madras Army, any better success. Lord Minto's General Order of the 20th July, announcing his intention of proceeding to Madras, is therefore the first document on the present subject to which Mr. Petrie and the authors of the Dissents can refer. This General Order was written

when

* See his General Letters, 12 Oct. 1809, para. 40.

when Lord Minto had heard of no other act of open disobedience in the Madras Army than the deposition and imprisonment of Colonel Innes, commanding officer at Masulipatam; and it dwells particularly on that affair. It was not framed, therefore, with the knowledge of any subsequent events. It must have reached Masulipatam long prior to the 7th August, and its effect may be seen by an Address of that date from the Officers who usurped the command there. Conceiving that Lord Minto meant to hold forth conciliation to them upon their own terms, they considered his General Order as consoling; but they so little knew what became the situation of the Governor General or their own, that they inform him, the *violent, oppressive, treacherous* conduct of the Government of Fort St. George to their brother Officers has led *them* to take measures for *their own* security:—they accuse the Government of *seducing the attachment of the native troops from their European Officers*, which they denominate *a species of treason* against the nation, and an act of the *greatest treachery* to them, which has destroyed all confidence, and warranted their precaution against further efforts of the same kind:—They say that the *redress required by the Army*, to retrieve them from that state of degradation into which they were plunged by the Order of the 1st May, is *absolutely necessary*. Such were the first fruits of Lord Minto's General Order. The garrison of Masulipatam continued in rebellion till the 16th August, when the Officers having received intelligence of the submission of the Hyderabad Force, Major Storey and Captain Andrews stated, in a letter addressed to General Pater, that the time was arrived when they found that they could no longer oppose the authority of Government without injury to the interests of their country. Let us now inquire into the effects of Lord Minto's publication in other places. It might arrive at Madras about the 6th August; and as the separation of the Bengal post to Madras and Hyderabad takes place at Masulipatam, and the distance is 120 miles less to the latter than to the former station, the presumption is, that Lord Minto's Order of the 20th July must have been known as early at Hyderabad as at Madras. On that very day, the *sixth* of August, Captain Sydenham, the Resident at Hyderabad, informs the

Government, that the Officers there look on their affairs as desperate, and are desirous of submitting upon an amnesty. It was not, however, until the 11th of that month, that the submission of the Officers of the Subsidiary Force was declared, when they solicited an amnesty from the Governor General, and circulated information of this proceeding to the several stations of the Army, and earnestly entreat their brother Officers to follow their example. They do not assign the expected approach of the Governor General as any reason for their conduct, but say that *imperious circumstances and mature reflection* had induced them to sign the declaration. The Jaulnah corps received this information on the 15th, when actually on their march to join the Hyderabad Force, and when Lord Minto's approach could be no secret : but though they were, in consequence of the resolution of the Hyderabad Officers, compelled to submit also, yet it is a generally reported fact, that they were so offended with the conduct of those Officers, as for a long time afterwards not to be on speaking terms with them. On the other hand, though the knowledge of Lord Minto's approach must have reached Seringapatam in four or five days after it came to Madras, that is, about the 12th at the latest, yet it was the 23d before that garrison surrendered, and then only on finding the other revolted corps had submitted ; so that when we examine the conduct of the four principal revolted stations of Hyderabad, Jaulnah, Masulipatam, and Seringapatam, the Officers of the first were influenced by *imperious circumstances*, and the other three did not submit till necessity also compelled them. Those "*imperious circumstances*" are explained by the Madras Government,* as already intimated, to have been the refusal of the Native Troops to act with the disaffected Officers at Hyderabad, and their inability, even had the Native Troops better supported them, to meet the force collected against them. To this account Mr. Petrie has set his hand, without recording any counter-declaration. And the statement given by Lord Minto himself, extremely different from Mr. Petrie's, must finally settle the question.† "*Many assurances*," says his Lordship, " had reached me (in Bengal) that my arrival would be the signal of submission ; and although I might reasonably suspect that

" such

* General Letter, 10th Sept. 1809, para. 145.

† Lord Minto's General Letter, 19th Oct. 1809, para. 49—46.

" such a disposition, if it existed, might be founded on expect-
 " tation of concession, which I should certainly have disap-
 " pointed, yet it did not seem impossible that men advancing
 " by such rapid and alarming strides to their own destruction,
 " should catch at the pretence of a new authority, in order to
 " retreat from the fearful course they were pursuing, with some
 " salvo for their pride." His Lordship adds, as another motive,
 the unjust malignity of the Officers against Sir G. Barlow,
 and the following paragraph, assigning the genuine reasons for
 their addressing their submission to the Governor General.
 " It happened that this paper (the General Order of 20th July)
 " reached the Hyderabad Subsidiary Force and some other sta-
 " tions of the Coast Army at the critical period already referred
 " to, when the Officers began to waver in their designs; and
 " the last paragraph appears either to have favoured the new
 " dispositions to *which other and more cogent reasons had given*
 " *birth*, or to have been employed as an additional means of
 " persuasion by those who wished, late indeed, *but earlier than*
 " *the rest*, to abandon themselves, and recal others from the
 " dangerous and fatal course they were running." *

* See also much
 more to the same
 purpose, and very
 apposite to the
 present point, in
 para. 66 of the in-
 closure of this
 letter.

The " critical period " alluded to in this passage by his Lord-
 ship, is described in the preceding part of the letter, to have
 been that which succeeded the several effectual measures above
 noticed, of the Fort St. George Government, for the suppres-
 sion of the revolt, which his Lordship explains at some length.
 We shall give but one short extract from this part of the letter.
 " The final and unqualified submission of the revolted Officers
 " has been more immediately brought about by the wise energy
 " of the later measures, the object of which was two-fold :
 " first, to separate the faithful from the disaffected ; secondly,
 " to withdraw the Native troops from the Controul of Officers
 " who were in open rebellion, and to replace the Company's
 " Army at the disposal and under the orders of Government."

After explaining the object of these measures, his Lordship
 goes on to state the influence produced by Colonel Close's effort
 " All that Colonel Close had it in his power to do at Hyderabad,"

says Mr. Petrie, "had no more effect in reclaiming the refractory Officers, than in producing the revolution in Portugal." His Lordship gives a very different account. "The natural effect of these circumstances was much enhanced at the principal station of the Hyderabad Subsidiary Force, by the appointment of Colonel Close to that command, and by the courageous and vigorous attempt he made in the very face of revolt, to detach the Native Battalions from their Officers. He was overborne, it is true, on the spot; but the impression appears to have been made, especially on the Native Officers, and to have afterwards matured itself into dispositions which increased the alarm of the Officers."

Mr. Petrie himself has subscribed to a similar account in the Fort St. George dispatches.

General Letter
of 18th Oct. 1860,
para. 17.

We shall close this article with another more general and very decisive testimony from Lord Minto.† "But my satisfaction was much increased by the important circumstance of this result having been obtained by the counsels and resources of Fort St. George itself, that is to say, the very Government whose power had been defied. This sentiment struck me forcibly in the first moment, and has been confirmed by every hour's reflection since. I have thought it, indeed, of so much moment to the public interests, that, in addition to the pleasure I personally feel in doing justice to Sir G. Barlow's public merits, and to my strong sense of the signal services he has, on this trying occasion, rendered to his country, the circumstance to which I have alluded has become a fresh motive to mark, as I have been careful to do, in every public document that has a reference to these events, the obvious and decisive influence of his character and measures, in producing that happy issue which is the subject of the present communication." Thus the magic influence, the instantaneous effect, which Mr. Petrie ascribes even to the report of Lord Minto's approach to Madras, is completely dissipated and destroyed by the concurring force of irresistible facts, and of the testimony of Lord Minto himself.

We have now gone through the review which we proposed to ourselves, of the origin and progress of the disputes between the Officers of the Madras Army and the Government of that Presidency. And we trust that it has been demonstrated, by the great body of facts and evidences which we have produced, that the aggression did not begin on the part of Government, but on that of the Officers; that the progress of disaffection and hostility among the Officers was owing essentially, not to the want of conciliation in Government, which acted constitutionally in defence of its own rights, but to an inveterate spirit of insubordination and pretension, which seditious acts had inflamed, in the Officers, who aimed at unallowable or illegal objects by criminal means; and that the suppression of the revolt was effected by a wise and vigorous application of the resources of the Fort St. George Government.

Concluding Observations on the origin, progress, and termination of the Revolt of the Madras Officers.

Of the many instructive lessons which the history of this remarkable affair furnishes, lessons which we trust will not be disregarded, it may be permitted to us to advert to one or two connected with the scope of this Paper: the first is *the importance of maintaining in unimpaired vigour the authority of our Indian Governments*. Ever since we have possessed territory in India, there has been a disposition in the European body there, particularly the military Officers, to enlarge their own powers and privileges. The great Lord Clive was very early sensible of this truth, and, in the year 1763, thus delivered his sentiments upon it to the Court of Directors: "This regulation (to increase the number of military Officers of rank) beneficial and necessary as it is, will, notwithstanding, be productive of one dangerous evil, if not constantly guarded against by the authority of the Governor and Council, supported and enforced by the higher powers at home. The evil I mean to apprise you of, is *the encroachment of the Military upon the Civil jurisdiction, and an attempt to be independent of their authority*. A spirit of this kind has always been visible: our utmost vigilance, therefore, is requisite to suppress it, or at least to take care that it shall not actually prevail. I have been at some pains to inculcate a total subjection of the Army to the Government,

" and

“ and I doubt not you will ever maintain that principle.” And early in 1767 the same distinguished man, then taking his leave of the Government of Bengal, thinks it important to inculcate the same sentiment still more forcibly, and in relation to the Civil as well as Military servants. “ No regulation can be carried into execution, no order obeyed, if you do not make rigorous examples of the disobedient. Upon this point I rest the welfare of the Company in Bengal. The servants are now brought to a proper sense of their duty. If you slacken the reins of Government, affairs will soon revert to their former channel ; anarchy and corruption will again prevail, and, elate with a new victory, be too headstrong for any future efforts of Government. Recall to your memories the *many attempts that have been made in the Civil and Military Departments, to overcome our authority, and to set up a kind of independency against the Court of Directors. Reflect also on the resolute measures we have pursued, and their wholesome effects. Disobedience to legal power is the first step to sedition ; and palliative remedies effect no cure. Every tender compliance, every condescension on your parts, will only encourage more flagrant attacks, which will daily increase in strength, and be at last in vain resisted.* I repeat that you must not fail to exact the most implicit obedience to your orders. Dismiss or suspend from the service any man who shall dare to dispute your authority. If you deviate from the principle upon which we have hitherto acted, and upon which you are conscious you ought to proceed, or if you do not make a proper use of that power with which you are invested, I shall hold myself acquitted, as I do now protest against the consequences.”

The Legislature since his Lordship's time has, by various Acts, happily and wisely placed a great degree of power in the hands of the administrators of British India ; both the administrators abroad and those to whose controul they are subject at home. But vigilance and resolution in the exercise of that power are still and ever will be necessary. The maintenance of it in its form and spirit, both in India and England, is, as we conceive,

conceive, necessary to the preservation of our Eastern Empire. If the will of the community in India, Native or European, Military or Civil, come, either by compulsion or influence on their side, or by relaxation on the part of Government, to dictate in the choice of public measures and public men, there is an end of the supremacy of this Country and of the Company over India. That supremacy stands or falls, is preserved or impaired, as the local Governments are maintained in due vigour, or decline into feebleness: and all advances to a preponderance of local influence, either by undermining or overawing the constitutional authority of those Governments, must proportionably diminish their efficiency, and the security of that system of administration on which the welfare of both countries so much depends. There is a tendency in every community, especially of Europeans settled in distant dependencies of their mother country, to prefer the local interests of those dependencies, to aim at local influence in their public affairs, and to make the voice and opinions of their community the standard of right and wrong in respect to those affairs. Wherever their opinions come in opposition to the local Government, they should be regarded with great caution. Local Governments are to be punished for misconduct, especially that which tends to alienate the affections of the people; but rarely indeed should the judgment of the local community be allowed any lead in this matter. A Governor may render himself obnoxious to the people under him, by a steady adherence to public duty, at the sacrifice of the private interest of others, and his own popularity; and the consequence may be, a combination to run him down, and, by discrediting his measures or embarrassing his Government, to effect a change. Such an effect would in reality strengthen the local influence, and proportionably diminish the power of the Constitutional authorities. The legal authority, therefore, of Government in India, ought to be maintained in its full vigour; not in view to the interest of the individuals who may happen to be in the Government, but to the interest of the State. The popular voice may speak truth and reason, and there it ought to be attended to; not because it is popular, but because it is just. The popular voice of Colonial Establishments

blishments will generally be for local interests. It is certainly the easier and more popular way for a Governor to lend himself to private or partial interests, when in opposition to those of the public, or to temporize and bend when a steady adherence to duty appears to be attended with conflict or danger: and he may then too be tempted to think the most convenient way also the safest. But when a numerous body is united in the pursuit of important interests, particularly when a great body of European Military Officers of our Indian Armies are combined to struggle for favourite objects, they are not to be diverted by words of complaisance. To hold a temporizing conduct is but the preliminary to concession, and concession in such circumstances is defeat—the defeat of legitimate authority—and the triumph of a body which ought to have whatever is reasonable by voluntary grant, but not even what is reasonable through the instrumentality of encroachment or usurpation. In maintaining these sentiments we think we consult the permanent interest of the Community, Military and Civil, as well as that of the Indian Governments and of this Nation. We, not less than those who have used the language of indulgence with respect to all the late excesses of the Army, are sincere well-wishers to their lasting welfare and fame. We are aware that the malignant arts of a few designing persons, and the rashness of many inexperienced ones, have essentially contributed to produce the astonishing spectacle which has lately been exhibited. We deeply lament the errors of the military, and wish perfect amity to be restored between them and their superiors: but these sentiments do not require, nor can any thing induce us to compromise the unalterable principles of good Government, on the maintenance of which the true happiness of all society must depend.

From the preceding doctrine a question naturally arises, concerning the influence which the *unpopularity of any Indian Government* ought to have upon the judgment and conduct of the Indian Authorities at home. It is obviously extremely desirable on various accounts, particularly for the easy transaction of the public business, and the satisfaction of those living under

under the Government, that its character should be popular ; but it is obvious also, that popularity ought not to be purchased at the expence of principle or of the public interest ; and that as it may be acquired by improper sacrifices, so it may be lost by an adherence to the obligations of duty. When dissensions arise in any State or community, it is to be expected that the party which is in opposition to the Government will represent its proceedings in an unfavourable manner. In such a case, the mere fact of its being unpopular determines nothing. Before that fact is adopted here, as a charge against a Government, the causes of the unpopularity ought to be fairly investigated. If the stability of the Governments abroad is to depend on the voice of local faction or party, or on the opinions, more or less general, which local communities may be induced to adopt, and not on the reason of things, there is an end of the supremacy of the Executive Body at home. On this account, even when Governments are wrong, and are seen to be so by the unbiassed sense of those around them, it should be demonstrated that the Authorities here act from their own deliberate judgment, and not from extraneous influences.

In the case now before us, of Sir G. Barlow, against whom the charge of unpopularity is often and vehemently urged in this country, it is manifest that the causes whence his unpopularity at Fort St. George has chiefly sprung, are the affair of Mr. Sherson, the proceedings connected with the Carnatic debts, and the discontents of the Officers of the Army. In all these cases, the objects for which he and the majority of the Council contended were public principle and public justice, the just interest and authority of the Company in opposition to private interest, which was deeply concerned in every one of these cases. He had also to carry into effect the difficult but necessary work of great retrenchments, which hardly any efforts on the part of a Government can render palatable ; and it has appeared what an extraordinary combination of factions he had to resist. He is not, as far as we know, accused of having acted from selfish or interested views—the charges against his personal character respecting chiefly his temper and manner. He is represented as

Application of these observations to the case of Sir G. Barlow.

The view of his temper and manners, by Mr. Petrie, and in the Dissents.

1 Mr. Petrie's
statement.

2 Dissents of
Mr. Elphinstone, Sir F.
Baring, Sir H.
Juglin, and
Mr. Pattison. } *passim*.

3 Dissent, Mr.
Pattison.

4 Do. Mr. Elphinstone.

*Some other
charges brought
against him in
the Dissents.*

5 Dissent of Mr.
Elphinstone.

66 Mr. Pattison.

†† Do. and like-
wise Sir F. Baring,
&c. and Col. Ban-
nerman, as to
keeping the Re-
cords.

22 Dissent of Mr.
Pattison.

§§ Do. Mr. El-
phinstone.

cold and repulsive,* then, (not very consistently) as violent and harsh; and it would seem from all these accounts, as if his manners had no small influence in producing the rebellion. But we do not understand that Sir G. Barlow has, in fact, been impelled, as frequent† expressions in the Dissents before us might lead the reader to conceive, from any thing violent, harsh, or irascible in his character. We are led to believe that he is a man of a calm, temperate mind; and though he is unpopular with those to whose ambition or interest his sense of duty has placed him in opposition, or with others influenced by their representations, yet we cannot easily express our sense of the injustice done him, when he is described in the language of Mr. Pattison,‡ himself entirely unacquainted with the scene, as “held in execration by a whole Settlement, civil and military;” and by Mr. Elphinstone,§ who, taking occasion to speak of another gentleman, Lieutenant-Colonel Leith, an Officer highly distinguished by his talents, and his faithful able discharge of the difficult obnoxious office of Judge Advocate General, is pleased to say, “that he is a man almost as much detested as “Sir G. Barlow himself.” Nor can we forbear remarking here, that it is in papers wherein passages of this nature are not unfrequently found, wherein Sir G. Barlow is charged with *intentionally* keeping back the Records,|| (when, as it now appears, there was nothing kept back or concealed,**) with monstrous absurdity, with folly and wickedness; ††—that he is also represented, on the ground of his public writings, which, in our humble opinion, are conspicuous for temperate manner and official style, as dealing “in violent malignant invective”—†† “in abusive language without measure, attacking “respectable characters, without either proof or probability to “support his assertions.”§§ Though these ~~large~~ charges are founded on Sir G. Barlow's writings, of which, as they are now printed, the world will judge; the opinion in general delivered by the Authors of the Dissents respecting his character must have been adopted from the reports of others, as these gentlemen themselves have no personal knowledge of him. Those opinions, however, entirely coincide with the representations of his adversaries, as do the views of the transactions

at Madras, given generally in the Dissents ; which, in our apprehension, furnish a very remarkable instance of judging against the great mass of recorded evidence, and according to the tenour of anonymous, interested, unproved accusation. This appears still more striking, when a fact, which we believe to be undisputed, is considered ; namely, that every one of the Authors of those Dissents voted, a very short time before the date of them, for the continuance of Sir G. Barlow as Governor in a new Commission for the Government of Madras.

But after all, Sir G. Barlow appears to have lived in entire cordiality with a most respectable part of the community of Fort St. George, including the eminent person who presides in the court of justice there, two of the Members of Council, the successor to General Macdowall in the command of the Army, and other distinguished servants, Civil and Military, as well as to have carried on the public business in great harmony with the Supreme Government and the other Presidencies, and with the Commanders of His Majesty's squadron.

If, in pursuing through thorny paths, those laudable objects which have been described, he had even somewhat erred in his course, he would still be entitled to our respect ; but if, from principle and duty, he has, unswayed by all the influence with which he was surrounded, and unawed by the most formidable combinations any Governor had to contend with, sacrificed so many personal considerations, and hazarded all personal consequences ; if he has also, by extraordinary fortitude, energy, and ability, crushed faction, subdued rebellion, and established the just authority and dignity of Government, he has exhibited a high example of public virtue and public service, as honourable to the country as it would be disgraceful to it to reward such a man with obloquy and condemnation.

We come now to the question of the removal of Mr. Petrie from the Council of Fort St. George, and the reasons on which that measure was founded.

The causes of the removal of Mr. Petrie from Council stated, and that measure justified.

Concerning the time and manner in which the question was brought forward in the Court of Directors, the circumstances and the motives which led to the introduction of it at that time; the manner in which the votes were given upon it, and an unbiassed majority finally decided for a new Commission of Government, wherein the name of Mr. Petrie was omitted, the late Chairman and Deputy Chairman, in opposition to the representations given in the Dissents, have laid before the Court a justificatory statement, to the accuracy of which, as far as it describes what passed in the Sittings of the Court, we must bear our testimony, and we trust it will be found effectually to settle all these preliminary points.

But to some other points, also of a preliminary nature, we must ourselves particularly speak.

The Dissents generally assert, in substance, what has been peremptorily affirmed in print, in the introduction of Mr. Petrie's *Statement*, that he "has been dismissed from his situation in Council, for no other reason than his having presumed (in compliance with his duty and with the repeated orders of the Court of Directors to the Members of their different Councils) to record, in decorous and modest language, his dissent to proceedings which he considered to be subversive of the law and dangerous to the public service." To this assertion we must oppose the most positive and distinct denial, as we did to the same allegation when first advanced in the discussion in Court. And we must also combat a dangerous principle, which may be implied in or deduced from the unfounded account here given. True it is, the Court of Directors have encouraged and required, that the Members of their Governments shall state, on the Minutes of Council, in temperate and decorous language, their reasons for dissenting to measures of importance adopted by the majority. We approve of those instructions, and intend to abide by them; but it never was the meaning of the Court of Directors, that a gentleman recording his opinion in opposition to any measure should exonerate him from responsibility for that

that opinion, and for the line of conduct followed by him in respect to that measure. Such a construction would afford an easy refuge from the consequences of the most exceptionable proceeding, and destroy one great use of the regulation, which is not only to bring before the Court of Directors all the arguments against as well as those for great measures, but to afford them the means of judging more strictly of the conduct, principles, and talents of every Member of Government. And it is further to be observed on this head, that, in the encouraging the exercise of a decent freedom of opinion, the Court of Directors have utterly prohibited all factious opposition.

We therefore totally deny also the unwarranted conclusion assumed in the Dissents*, that the Councils of our Government abroad will henceforth be reduced to a cipher, and the Governor possess the sole power, whereby the Government will be rendered arbitrary. The conclusion being deduced from unfounded premises falls of itself; but, besides that the present measure is not likely to lead practice to any such doctrine in India, it will always be true that a Counsellor cannot divest himself of responsibility any more in supposing than in opposing the measures of a majority.

* *Active Dissents.*

Secondly. It is to be carefully remembered that the real question before us, was not simply whether Mr. Petrie should be removed from Council, but whether he who, through the whole progress of a most arduous period, had opposed that course of measures which the authorities at home have judged to have been proper and necessary, or either of the other two Civil Members of Council, who had uniformly supported that course of measures, should be continued in the Council. There was a necessity of removing one, Sir Samuel Auchmuty, the newly appointed Commander in Chief, having been also nominated to be second in Council, and the whole number of Counsellors being by law limited to three. *The question then was, whether Mr. Petrie, who had opposed those measures, or one of the other two Members, both of whom had supported them, should be removed.* The Dissents, in discussing this measure, have

have introduced, we think improperly, allusions to personal motives which may have biased in the adoption of it. We trust that we might safely leave our characters to speak for themselves against any allusion of that nature; but in a time of so much misrepresentation, we think it not amiss to declare, each from consciousness for himself and from belief for the whole, that we have been governed in this affair by the great motives of public duty and public good. "That Mr. Petrie's defence has not "been heard," and "that he has been removed on clandestine "evidence," we are surprised to see some of the Dissents* asserting, when his Minute is a professed defence, delivered by himself to the Board of Madras, in answer to the charges brought against him by Sir G. Barlow; and when it was acknowledged by some of his supporters, in the discussion of the subject, that there could be no doubt of the authenticity of the copy of that document, laid before the Court under the signature of the Secretary to the Government of Fort St. George. We acted upon the Statement of those charges by Sir G. Barlow, and that defence by Mr. Petrie, not upon anonymous publications of any description, as seems to be idly surmised, nor upon private application, nor to gratify any individual. And as to the objection made, when those documents so authenticated were laid before the Court; "that the Madras consultations were not "then arrived," an objection which was overruled from the exigency of the case, and the apprehended sufficiency of those documents, particularly the evidence from the defence of Mr. Petrie himself, it has been found that those Consultations, since received, contain nothing more upon the subject.

The Dissents have also introduced a comparison between the merits and services of Mr. Petrie and Sir G. Barlow. The measure of removing Mr. Petrie, which a sense of duty imposed on us, we adopted with reluctance, but with no wish to say or do any thing which might add to the pain he must naturally feel on such an occasion. Those gentlemen who espoused his cause have, by arraigning that measure, forced us into a defence of it, and hence into an examination of Mr. Petrie's conduct, which we should otherwise have avoided. We think this comparison

was still less expedient. Had the arduous task been accomplished of establishing by argument, (a mode which has not been adopted,) that Mr. Petrie was right in the line of conduct he held respecting all the controverted questions, it would still have remained an undertaking of no small difficulty to prove that Mr. Petrie's preceding services had surpassed in importance and merit those of Sir G. Barlow. But we do not feel ourselves called upon to occupy time in discussing a question, upon which we confess, without meaning any disrespect to Mr. Petrie, we were not aware, until we saw the Dissents, that the opinion advanced upon it in them had been at all entertained. Only as to the extent of time and the employments in which the two gentlemen have served the Company, we should just observe, that it is indeed above forty years since Mr. Petrie entered the service, but that he has passed only twenty-eight years in India, having been, since his first appointment, four times at home, twice for six years at a time; whence it is natural he should be better known here than Sir G. Barlow, who has never been in England since he first entered the service in 1778, a period of thirty-one years. With respect to employments, Mr. Petrie, after having held several respectable offices for short periods, became incidentally a Member of Council for six weeks in 1787. In 1788 the Court passed some animadversion on one part of his conduct in a paragraph to Madras, which was struck out by the Board of Commissioners, and an approbation substituted. In 1789 he came back the third time to England with a recommendation from the Madras Government "that he might be" (not extraordinarily remunerated or distinguished, but) "allowed to return to the service when his health should permit." In 1791 he went again to Madras, with the appointment from home of third in Council, and to succeed *pro tempore* to the Government in case of vacancy: but in 1792 he came home the fourth time. In 1798 he returned to Madras with the appointment from England of a seat in Council, and the temporary succession to the Government. In 1802, Mr. Petrie was presented by the Court, as is stated in one of the Dissents,* with the sum of 10,000 pagodas, "as a mark of the high sense they entertained of his long and faithful services." His time of actual

* Sir F. Baring and Sir H. Inglis.

actual service then amounted in all to about 20 years ; and as this present, which was given when Lord William Bentinck was appointed successor to Lord Clive, is quoted to aggravate the alleged injustice of his late removal, we must fairly say, that if it is intended to adduce the present as a " proof " of the superiority of Mr. Petrie's services, in length or in value, to those of many other servants not so remunerated, a review of facts will not, in our opinion, support the intention. Mr. Petrie has remained in India since 1798 ; and the course of his service under the Governments of Lord Clive, Lord William Bentinck, and Sir George Barlow, with the short period of less than four months in which he held the Government himself, is sufficiently known. Sir G. Barlow is known to have devoted himself through the whole of his service, to an uninterrupted course of public labours, by which he has been, ever since the beginning of the year 1787, that is, soon after Lord Cornwallis entered on the Government of India, eminently distinguished. In the year 1788 he was appointed to the charge of the Secretaryship of the Revenue Department, and held it during all the period in which the great institutions of Lord Cornwallis, respecting the Land tenures of Bengal, and the administration of justice were framed. In 1796 he was called to the arduous employment of Chief Secretary to the Government, and in 1802 appointed a Member of the Supreme Government. He has been twice nominated successor to the office of Governor General, has filled that office two years, was removed from it only by His Majesty's Warrant, and was in 1807 appointed to the Government of Madras. So far are the testimonies in favour of Mr. Petrie from being " unprecedented in the annals of " the Company "—an expression which surprised us—that, if the public Records are consulted, those in favour of Sir G. Barlow, both from home and from India, will be found more numerous and more strong.

Fourthly. As, in the course of the preceding Review, we have been led to advert to certain facts and documents, which were not under the notice of the Court of Directors when the measure of removing Mr. Petrie was adopted, we desire to be understood

understood as not resting that measure in any degree upon them, but as quoting them only to illustrate the propriety of it, and the merits of the general questions under discussion. But having, in the same review, taken frequent occasion to deliver our sentiments upon particular points in the opinions or conduct of Mr. Petrie, which are either professed in his Minute, or fairly deducible from it, or are elucidated by other facts publicly known at the time of his removal, we must request that, though our observations of that nature cannot be recapitulated here, they may be considered as having then influenced our judgment, and as being now urged in support of it. And whenever our conduct in relation to this affair shall be examined, we protest against excluding, in the consideration of it, the foregoing observations, more particularly, though not exclusively, those which relate to the questions concerning General Macdowall, Colonel Capper and Major Boles, the discontents of the Officers, the suspensions of the 1st of May, the Test of the 26th July, and the causes which terminated the revolt.

Fifthly. We shall therefore, after these introductory remarks, proceed to state in a summary way, under general heads, the grounds upon which our opinion was formed, and we think is justified, that the removal of Mr. Petrie from Council was proper and necessary.

1. Mr. Petrie was, in our judgment, totally wrong in his whole system of policy with respect to the Officers of the Army. We do not mean that conciliation is not at all times desirable, and ought not to have been preferred if it had been practicable, but that the insubordinate seditious conduct of the Officers left no means of conciliation on the part of Government, unless passive submission to insult and degradation be called such, and that these means would only have increased the measure of military usurpation, and rendered the Government incompetent to the proper performance of the high duties entrusted to it. Mr. Petrie, in the whole of his conduct and reasoning, seems not to have seriously taken into his contemplation the credit, efficiency or security of the Government. He has indeed spoken

of "dignity, firmness, moderation," of an "appropriate General Order," (which would, as we have shewn, have been an act of imbecility) of "producing happier effects at less expense;" and the authors of the Dissents, who have coincided in his views, have held much general language of the same kind; but neither Mr. Petrie nor they have given us the least definite idea of the manner in which he would have acted, had the conduct of affairs been in his hands, unless it were by concession: nor from the nature of the case does it appear that there was any possible mode of action, except by resisting insubordination and sedition, or in one form or another, by concession, connivance or passiveness, yielding to them:—The ill success of attempts to gain the Army by forbearance, temporizing, and patience under open revolt, was fully exemplified in the conduct of Colonel Montresor, Commandant at Hyderabad, and Colonel Malcolm at Masulipatam. And in fact, it appears that Mr. Petrie looked chiefly to concession. But whilst no real attention was manifested by Mr. Petrie to the interest and the character of legitimate authority, he seemed to set no bounds to the lengths to which he would permit the Army to go, rather than enter into serious contest with them, nor to consider what the effects of unrestrained military licence and encroachment must be. Whilst he was alive to infinite dangers on the one side, he seems to have adverted to none on the other. To that the foresight ascribed to him does not appear to have been turned. The Officers, on his principles, must have had their will; the public disgrace of Government in its compelled rescinding of its own Orders passed for the suppression of open rebellion; the removal from office of individuals, whose merits had rendered them obnoxious to the Officers: the establishment of the "Rights of the Army;"—the recommendation at least of Government for the "appointment of the representative of the Army" to Council; the overthrow of retrenchments, &c. We mean not that Mr. Petrie has said this, but that it would be the result of his system. He thought that if an open conflict was prevented, the grand point was secured; and to obtain this it would seem, for any thing that appears, he would have abandoned to chance all other consequences. "To my judgment,"

says Mr. Petrie, "the repeal of every Order passed for the last " eight months," (his meaning is probably the same as in his Statement, where he says twelve months) "would be a lesser " evil than shedding a drop of British blood in a civil contest." "To me concession seemed as a *feather* when placed in " the scale against the revolt of the Army, a civil war, and the " probable loss of the country." He seeks to justify his opinion by saying, "that greater Powers than ours had conceded to " expediency or necessity." The allusions which it would appear he had in view here, namely, the proceedings of the Volunteers in Ireland, and the mutiny in our Fleet, were cases utterly different, not threatening the subversion of the British Government; and, in assuming that concession was dictated to the Fort St. George Government by "expediency and necessity," he has begged the whole question. The result has at least proved that concession was not *necessary*. But Mr. Petrie does not appear to have had an idea that revolt could have been successfully resisted; and, after he had seen the contrary, he has (dangerously we think) assigned to 'great and singular good "fortune," what was the effect of the real strength and rational measures of Government. It would seem, indeed, that he apprehended no danger from the largest concessions. He thought that Sir G. Barlow hazarded every thing for a form, and that his own course would have secured the *substance*. And here it is that we hold Mr. Petrie to have been essentially wanting in the judgment required in the station and circumstances in which he was placed. It is our decided opinion that Mr. Petrie's system would have sacrificed the *substance*, would have weakened and degraded the Government, and have given an ascendancy to the military power, which must either in the end have been opposed with more disadvantage by an open struggle, or have been productive of confusion and danger, internal and external. The effect of Mr. Petrie's mode of thinking on this subject is not to be confined to his own conduct only. The general tenour both of his sentiments and conduct must have been known to the Army and the public, and without supposing any factious view on his part, have produced an influence prejudicial to the Government. And having not only acted upon, but published

to the world, those sentiments in favour of indefinite concession to the Army, and against all serious resistance to them, we think it was unfit that a person known to hold such sentiments should remain a Member of Government, in the station too next the Chair, and more especially at a time when unanimity in the Government upon this great question of the line of policy to be held with the Army was so requisite, and when the unequivocal and decided support of the measures of that Government by the Court of Directors was so important.

2d. Upon the principles or opinions Mr. Petrie himself has avowed, his conduct appears to us to have been extremely culpable.

In the month of October 1807, when he was in the Government he stated repeatedly and forcibly to the Court of Directors, "that a very dangerous spirit of insubordination and cabal had lately shown itself in the Army, (which must be dangerous to all armies) which, after the events that had agitated the Native Army of that Presidency, might lead to consequences of the most fatal nature: and we are satisfied," continues the public letter of his Government, signed by him, "that nothing but a firm determination to resist and to punish every appearance of disrespect to the public authority, can uphold that degree of discipline which is essential to the existence of your Army."

We hear no more of this language or tone from Mr. Petrie in the Government of his successor, although the spirit of insubordination was progressive, originating, as was observed before, from no act of Sir G. Barlow's, and had become ostensive in cabals, combinations and factious proceedings, before General Macdowall had commenced his public outrages against the Government. M. Petrie appears wholly to overlook the course of highly insubordinate, factious conduct pursued by that Officer, without reserve, among those under his command in the progress of the year 1808; a course of which, as it was generally known, Mr. Petrie could not have been ignorant. And when

when General Macdowall went to a length no other man had ever ventured upon, in publicly insulting the Government, Mr. Petrie gives the General Order of that Officer the mild epithet of *disrespectful*, is for passing it over without any exercise of *severity*, as he expresses it, to General Macdowall, and, in all the subsequent insults publicly offered to the Government by the Officers, he is utterly forgetful of his own declarations, that “*insubordination may lead to the most fatal consequences, and that the discipline essential to the existence of the Army cannot be upholden without a firm determination to resist and punish every appearance of disrespect to the public authority.*” He ~~throughout~~ extenuates the proceedings of the Officers, whilst the language of his Minute throws the chief blame on the Government. Instead of hearing any more from him of the necessity of supporting the public authority and the discipline of the Army, he appears to be uniformly for suffering every thing, and yielding every thing, rather than enter into contest with the Officers, which, as the general tendency of his opinions and disposition must have been known, could not fail to animate the disaffected. Perhaps it may be expected, that in justice to him, we should notice a distinction introduced on this head in his Statement; “that, if turbulence in the Army was confined to a part, and did not extend to a majority, it was our duty to meet the case with exemplary punishment; but that, if the whole or a great majority was disaffected to Government, the measures Sir G. Barlow proposed were totally inapplicable.” Upon Mr. Petrie’s own reasoning, he is censurable in not joining with Government to suppress the earlier stages of insubordination, before it could be said that general disaffection existed; but in fact, the distinction here so broadly stated terminates in this; that if the seditious in the Army can only make their combination general enough, they must not be resisted; a principle which, if Governments were to adopt, there must be an end of the supremacy of the Civil Power over the Military. “The grievances of the Army,” a phrase become common among the Officers, is a phrase repeatedly employed in Mr. Petrie’s reasonings, and apparently with a degree of admission; but he enters into no explanation or discrimina-

tion touching those grievances. Now it is known that the unreasonable and inadmissible claims contained in the very improper Memorial of the Officers, pressed on Government by General Macdowall, made up at least a considerable part of their "grievances." These claims, as well on account of their nature, as because they were made in opposition to the acts of former Governments in which Mr. Petrie had concurred, or to the acts of the Court of Directors themselves, it was the duty of Mr. Petrie openly to resist. Instead of seeming to tolerate their being set up, and remaining as grounds of complaint, he should have fairly and publicly expressed his disapprobation of them, in order clearly to inform the Army of his sentiments on this material subject. He could not, to be consistent with himself, allow that the claims were founded; nor does it appear that he thought them so. He has subscribed to the Fort St. George letter of the 10th September 1809, which states the Army had no grievances; but there is an indiscriminating toleration and indulgence respecting "grievances," visible in his Minute, very different from his style in October 1807; and, in the temper and circumstances of the Army very incongruous to his duty as a good member of Government.

It cannot be doubted, that whatever Mr. Petrie's opinion of the proceedings of Government towards the Army might be, it was incumbent on him to use his utmost efforts to restrain their criminal excesses, especially when they were advancing to open insubordination and revolt. He has mentioned his endeavours with individual Officers; and it would have been satisfactory to have seen something of his correspondence, and more of his proceedings on this subject: but we think this was not enough. In so great a crisis, it would have become a man in his high situation, and possessing influence, as he says himself, with Officers, to have interposed with them more publicly and zealously for the prevention of the evils he feared. Delicately circumstanced as he was, it would have been proper and useful in him to have declared in a public Minute his reprobation of insubordination and sedition, and of all agitations tending to them. From such an act, solemnly performed and made known
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by a man whom the Army looked upon as friendly to them, some good would probably have resulted, and at least, it would have been a defence against misrepresentation.

We think Mr. Petrie's conduct in Council, and towards the Court of Directors, in relation to the discontents of the Army, liable to objection. It does not appear that he fully debated at the board the measures there proposed; but he refers to private conversations with Sir G. Barlow. On such momentous subjects it was, on his own principles, his duty to state his opinions openly in Council. Private conversations are no record; and such an ambiguous course of private objection and ostensible passiveness, leaves an opening for maintaining afterwards, according as events turn out, either that measures were opposed, or that they were acquiesced in. Upon the same principles that Mr. Petrie recorded his Dissent to the measures of Government against individuals, it was his business to enter his objections to the proceedings of Government on great questions which involved the highest interests. Unless Sir G. Barlow's Minutes, written a year after the commencement of the Army agitation, and, with Mr. Petrie's reply, produced explanations, the Court of Directors probably never would have known the opinions or the line he held respecting those subjects; but seeing his signature to all the Letters relative to them from the Government, without any counter-declaration, they would of course suppose he acted with his colleagues, unless subsequent censure from the Court should have drawn forth exculpatory information from him: whereas he himself admits,* "that the Court will require to know the causes which have exposed the State to such dangers, and that he has an opinion of them very different from the President's."

3d. We wish that Mr. Petrie had been so guarded in his conduct, as not to have left it liable to the construction of affording countenance to the factious opposers of Government. Whilst it is allowed that members of Government possess the right of maintaining, with decorous freedom, their conscientious opinions on public subjects, even when they differ from

the majority ; it is also to be granted, that however they may oppose particular measures, it is their duty to uphold the general authority and efficiency of Government, because, when these are impaired, the ends of the institution of Government itself are so far frustrated ; and, in a time of party violence, and of disputes between the Government and any portions of the community, dissentient members of that Government ought to be very careful, that whilst they adhere to their own opinions, they do not, by their conduct otherwise, throw weight into the scale of factious opposition. We do not think Mr. Petrie has been sufficiently attentive to this material distinction. Supposing it even granted that the supporters of Mr. Sherson, of one party of Carnatic Creditors ; of General Macdowall and the subordinate Officers, were all right as to their particular objects ; yet, in going beyond those objects, in combining to revile and run down the Government, with the view, at length apparent, of effecting a change in the administration of it, they broke in upon the respect and reverence due to the ordinance of Government, and acted injuriously to the public interests. No appearance should have been admitted from whence they or the Public might imagine that all the members of the Government did not decidedly reprobate all tendencies of this kind. But Mr. Petrie's friendships and intimacies seem unfortunately to have been very much with the persons in opposition to the Government, and to have been kept up after their opposition had become general and notorious. We do not say that he was to have given up his real opinion of the innocence of any individual, because Government had thought him guilty ; but certainly, after such individual had been publicly marked by the censure of Government, and had, in consequence, been raised into popularity by the disaffected as a martyr to the injustice of Government, it was Mr. Petrie's duty to abstain from whatever might be construed to countenance such a spirit of faction. But after the suspension of Mr. Sherson, and after his case had become a rallying point for the disaffected, we find, by Mr. Petrie's own account, that he is frequently and familiarly received at his house. Mr. Petrie says, one reason of this was, that he might obtain from Mr. Sherson himself, explanations concerning

concerning his accounts, which he (Mr. Petrie) was then investigating for his own satisfaction, after the Grain Committee and Government had pronounced Mr. Sherson guilty. We cannot but doubt, in the first place, the propriety, under all existing circumstances, of a private examination of this kind between Mr. Petrie and the accused; but must not Mr. Petrie have been aware, that the Public could not know of the reasons assigned by him for seeing Mr. Sherson so frequently; and that the familiar reception of Mr. Sherson at his house would be interpreted as intended to give him the same countenance and support, which he had from a party, because under the disapprobation of Government? So with respect to Lieutenant Colonel Sentleger, Major Boles, and Captain Grant, of whom the first and last were suspended on the 1st May, and Major Boles on the 31st January. Mr. Petrie, in admitting that these Officers occasionally called upon him, says, that "all the objects of his communications with them was through their influence to allay the alarming ferment which was rapidly spreading from one station of the Army to the other, &c." Now, as here again, the reception given to gentlemen, known to be in hostility to the Government, might easily be misinterpreted by the Army, so we must confess that it seems an unfortunate proceeding in Mr. Petrie to have chosen, for the purpose of allaying discontents in the Army, Officers whom the Government found it necessary to suspend for insubordination or sedition; and against the first of whom, Lieutenant Colonel Sentleger, Mr. Petrie, as we have seen before, had on the 21st October, 1807, made very strong representations on account of insubordinate conduct; namely, that he had "placed himself in the character of a Defender of the general interests of the Company's Army, and that he was eager to promote dangerous discussion; whence Government were impressed with the strongest sense of the dangerous tendency of his inflammatory and factious proceedings." And afterwards, in the same Letter it is stated, "that the dangerous spirit of cabal in the Army had been greatly inflamed by the impunity with which Lieutenant Colonel Sentleger had hitherto been enabled to brave and insult the authority of Government," (Mr. Petrie was

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then sensible that impunity added to insubordination) " and " that he was held up at the principal military stations as the " champion of the rights of the Army," &c. Into the defence of Lieutenant Colonel Sentleger, which Mr. Petrie seems to adopt, against the charge on which he was suspended, we shall not here enter, as there will be another occasion to consider that charge, and the proofs by which it is established; but, passing over also the complimentary strain in which Mr. Petrie, in his Minute, writes of that Officer, we cannot avoid expressing our surprize at his quoting, with apparent satisfaction, what Lieutenant Colonel Sentleger had stated to him as part of his defence; namely, " that he had endeavoured to dis-
 " rage in the Officers under his command, every idea of *openly*
 " opposing the authority of Government;" though it appears from Mr. Petrie's Statement, that he understood this Officer, and nearly all those under his command, to have taken *an active part in exclaiming against the measures relative to General Macdowall, &c. and had signed " certain inflammatory papers;"* which is something of the same nature as the observation Mr. Petrie makes in behalf of Colonel Capper and Major Boles; that the remotest intention of *creating a mutiny in the Army,* could not be imputed to those Officers.

We certainly could have wished to have seen Mr. Petrie actively and ostensibly associating with men also of another description, known friends to order and obedience, for the purposes of ascertaining accurately, and of allaying the discontents of the Army; but even when he learnt from Lieutenant Colonel Sentleger, " that a most dangerous combination existed " in the Southern Army, to resist the Orders of Government, " and to insist on a redress of grievances," we do not find that he proceeded to communicate this information, most important as it was, to Sir G. Barlow or his colleagues in the Government.

We are indeed concerned to see, that Mr. Petrie's defence of himself, in answer to Sir G. Barlow, does not exhibit him as living in habits of private intimacy and confidential communica-
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tion with any description of persons but such as were in a state of hostility to the Government, both in the Civil and Military lines of the service. And on the whole of this head, so far are we from thinking with the authors of the Dissents, that Mr. Petrie has refuted the accusations of Sir G. Barlow, that we are of opinion the facts he has admitted, and very unsatisfactorily explained, establish a great deal; that his house was open to the malcontents (even after Sir G. Barlow's admonition *, though he might not subsequently have asked suspended servants to come to it;) that he was considered as a friend by all those of that description whose names are prominent in that time of commotion; and it must be evident, that in a community violently inflamed by the spirit of party and faction, in which the course held by the second Member of the Government could not be unobserved, his maintenance of opinions which were also held by those hostile to Sir G. Barlow, and his opposition to the same measures of Government which they likewise opposed, might, without much greater precaution than he used, be naturally interpreted by the different parties united against the Government, as a support and encouragement to their cause.

* Minute, p. 22.

Some of the Dissents † lay much stress on the declaration of Lord Minto, that in doing justice to Sir G. Barlow and the gentlemen who supported him, *he did not mean to reflect on the conduct of Mr. Petrie*; but that he thought the conduct of Mr. Petrie wrong, is evident, both from his own opposite course, and from the passage of his letter immediately following the one alluded to; wherein he says, "In a case of crisis, however, when to place the matter on a broad and general ground, a strong Government might reasonably be accounted essential (if I may use that phrase) to the safety of the commonwealth, the Dissent of a Member of Council so considerable in station, character, and talents, must give additional value to the useful and efficient support which Sir G. Barlow and the public cause have derived from Mr. Oakes and Mr. Casamajor."

† Sir P. Baring, and Sir H. Leigh and Mr. Elphinstone.

We, therefore, on the whole, of this article, must express our full persuasion, that the conduct held by Mr. Petrie could not but have been, as Sir G. Barlow has stated, "productive of serious impediment to the administration of the affairs of Government, and of injury to the public interests;" and this in a way and to an extent which the maintenance of his own opinions needed not have produced, and for which his right to maintain those opinions forms no valid excuse.

4. The last topic to which we shall advert, is the refusal of Mr. Petrie to sign the Address, framed by a respectable body of the inhabitants of Madras, to Sir G. Barlow.

In order to form a correct judgment on this subject, we must look to the general state of affairs under the Fort St. George Presidency, at the time when the Address was proposed, and to the import of the Address itself.

Mr. Petrie, it appears, refused to sign the Address on the 30th July. At that time the danger was almost at its highest point. It is an essential misstatement which is made in Mr. Petrie's defence, "that the Army had then manifested unequivocal proofs of returning subordination and obedience." The facts stated in this Paper, and the most authentic documents concerning the progress of the revolt, prove the contrary. Colonel Malcolm had but a little before returned from his unsuccessful mission to Masulipatam. On the 30th July, the garrison of Seringapatam broke out into open rebellion. On the 3d August, Colonel Close was driven from Hyderabad. The action with the battalions from Chittledroog, the seizure of the public treasure in the Northern Circars, the mutiny at Ellore, the march of the Jaulnah Force towards the Presidency, all happened after the 30th July; and the first indication of returning obedience, which was the submission of the Hyderabad Force, is dated the 11th August, and could not have reached the Presidency till the 16th or 17th. Thus a great part of the Army was in open rebellion. The allegiance of the rest was at least questionable.

In times of public peril, the mode of addressing the established Government with professions of loyalty and support is usual and natural. It is proper in Governments, at such times, to accept and even to wish for such testimonies of attachment. Some of the most respectable of the inhabitants of Madras, in a crisis big with danger to that Presidency and to India, thought it their duty to adopt a measure of this kind. The Chief Justice, a man next in rank to the Governor, and no less distinguished by his character than by his station, the two junior Members of Council, the Commander in Chief of the Army, and other conspicuous persons, took the lead. The Address went into no discussion of the measures of Government. It only expressed, on the part of the subscribers, a disapprobation of the insubordination that had recently shown itself among the Officers of the Company's Army, so dangerous in its tendency, with assurances of support to the interests of legal government, and a readiness to devote life and fortune to the maintenance of the public tranquillity.

We would ask, whether, in the state of things at that moment, when the "sword of revolt" was unsheathed, and the flames of civil war likely to be kindled throughout the country, every man, and especially every public man, was not called to take his line? whether neutrality was any longer consistent with duty?—whether any loyal man could possibly take the side of opposition to lawful authority? and whether the Address pledged to more than the support of the Government by law established, and resistance to the principles of insubordination and disobedience?

On what grounds then did Mr. Petrie refuse to become a party to this Address? He thought "it might increase irritation," and produce an unfavourable effect on the disposition of the "Army, which had then manifested unequivocal proofs of returning subordination and obedience, and that the wounds were beginning to heal." This reason had not, as already shown, the least foundation; there were not any symptoms of returning subordination nor of begun amendment. The princi-

pal reason, therefore, assigned by Mr. Petrie, wholly fails. He thought also "that such a public manifestation of the sentiments of a part of the settlement, so strongly expressed,"—(the expressions are, in our opinion, remarkably temperate)—"could do not possible good, but might add to the difficulties which still opposed the recalling a considerable part of the Officers to their duty." As it appears from various documents that the Officers were conscious they were acting a most criminal part, it is far more probable that the public erection of a standard of duty and loyalty must have struck them with a deeper sense of their criminality, and made their perseverance harder to themselves. The difficulties still "opposing the recal of many of the Officers to their duty," is an idea growing out of the preceding groundless supposition of "*unequivocal proofs of returning subordination*," and falls with it. What means, or what probability appeared of recalling the Officers, then remained, unless to convince them that they had not the power of overawing and controuling the Government which they believed themselves to possess? That only a *part* of the Settlement signed the Address—(many more might perhaps have signed it if Mr. Petrie had set an example)—is, in our opinion, an unsound argument, although it is adopted in some of the Dissents;* for it is precisely in times of faction and division that such Addresses are pertinent. But does the duty of supporting legal government, depend on the numbers that may concur in that object? The duty surely attaches to every individual, whether he has many or few to act with him; and if, on the occasion in question, but a few were found, the greater was their honour, whilst those who refused to join them, were, in our opinion, highly culpable. Mr. Petrie, in the way of objection, alludes to "*the means of obtaining signatures*;" and one of the Dissents † explains this as if the author of it has been an eyewitness, by saying "the Address was carried from house to house" by an Officer whom he is pleased to stigmatize, and who, according to him, "flattered and threatened as he judged most likely to prevail;—to some he held forth promises of the Governor's favour;—others he threatened with his highest displeasure." On this passage we would observe, that there

* Sir F. Baring and Sir H. Inglis, and Mr. Elphinstone.

† Mr. Elphinstone.

is not the least vestige of authority for it in the public Records, which the honourable writer himself has made the only standard by which our decision should be regulated ; nor is it even supported by the slightest shadow of that "*ex parte* evidence" which, he observes, "should not be implicitly believed." and we cannot say how unwarrantable appears to us the whole of this attack not only upon a very deserving Officer, to whose character we have already done some justice, but on the highly respectable individuals who signed the Address, and indeed on the loyal measure of standing forth in defence of lawful government. This honourable Writer further says, "that if any good consequence could have been expected from an Address, a meeting should have been called, and the Address voted publicly." This certainly would have been a most pernicious proceeding. We apprehend it was perfectly competent to any individuals, to set their names to a paper promising support to the constitutional authority, at a time when it was threatened with subversion ; but for the inhabitants of Madras to assemble collectively, in order to debate or discuss any of the measures of Government respecting the Army, would have been to assume a very dangerous power to which they had not the least right ; and to open a theatre for all the clamours and abuse of faction, to the still deeper injury of Government. Or if, in such an assembly, it were proposed to vote upon any question, the real import of which, however worded, should be whether the legal Government should be supported or not, it would be something like treason. Mr. Petrie has appealed to the *result* of the Address, which, he says, instead of strengthening the hands of Government, restoring harmony, mutual confidence, &c. &c. increased animosity and contention. This mode of arguing from consequences, (to which he has elsewhere objected), seems to require effects from the measure which it never could be expected to produce. The disaffected were not likely to be reclaimed by the Address ; nor is it a wonder that those whose policy it was to await events without taking a decided part, still wished to find excuses for not committing themselves, and at the same time to have their refusal to sign the Address considered as no decision against the Government. But whatever

real friends of Government concurred in the refusal, were injudicious friends; and the conduct of all these descriptions of persons does not impeach the propriety of the measure of an Address, nor the mode in which it was conducted, by obtaining signatures, being indeed the only mode that was open. It was still a noble testimony to the principles of order and loyalty, and shewed a band of the very best subjects under that Government to be devoted to its support. If there was a want of attention to Mr. Petrie, as he complains, in not first consulting him upon the measure, it lay with the movers in it to answer that minor objection, which certainly could weigh but little in a question of so important a nature. It is urged in Mr. Petrie's defence, that though he refused to sign the Address, yet he afterwards stated that, "if the Government in Council, or the general sense, attached any beneficial importance to the public interests, or that it could effect the peace of the Settlement, mislead any one, or prevent mischief, it would be his duty to yield his opinion to theirs, and affix his name." But the value and importance of Mr. Petrie's signature depended on its being spontaneous. He had, "after mature and serious consideration," stated his reasons why "he could not, with propriety, give the Address his signature;" and he still "thought his reasons just." A signature affixed at the desire of Government, under all these circumstances, which could not be unknown, would have been deemed an official act, not the offspring of his own judgment and inclination, and would place the Government in the light of soliciting a countenance, which, given in that way, would, after all, do them little or no good. We do not, therefore, wonder that Sir G. Barlow avoided going into the subject with Mr. Petrie, and left him to act according to his own judgment. The offer of Mr. Petrie, as above quoted, seems, however, to indicate some apprehension, at least in his mind, that his signature might be of importance; and we find it very difficult to conceive that he must not have been sensible a declaration like that contained in the Address, voluntarily made by him in conjunction with other distinguished characters, would have produced a beneficial effect upon the minds of the Officers.

At any rate, being called to it as he was, he had this plain question before him—whether he, the second Member of the Government, should appear to the Army and to the world as one of those determined and pledged to support the lawful Government against insubordination, or as one of those who declined to give such a pledge, and to make such a declaration. He chose to appear in the latter class; and let it be recollected this was at a crisis when the Officers were in actual rebellion against the Government, and civil factions were also opposed to it. Let it be recollected also, that Mr. Petrie excused his not entering any Dissent to certain measures which were supposed to have had an influence in producing the Vellore mutiny, because he would not have it appear that there was any difference among the Members of Government at so critical a conjuncture. Must he not then have been perfectly aware of constructions unfavourable to Government, which would be put on his present conduct? What was the lowest interpretation that would be made of this proceeding by the Officers? We conceive this—that he was not to be considered as acting with the Government in their principles or measures respecting the Army; that he bore with all the Officers had done, even to the horrible crime of turning their arms against the Government, and seizing the forts and treasures of the public; that he did not shut out treaty with them upon the basis of their own demands, which included restoration of Officers dismissed for sedition, &c. to which treaty a general amnesty must, of course, be preliminary; that, therefore, he was not disposed to resort to the military means (ample as they were,) which Government had for its own protection; but, in short, looked only to a present compromise, or rather treaty, of such kind as could be obtained, including probably a reference to the arrival and decisions of Lord Minto, who had already declared himself against the whole system of the Officers, or a reference, concerning points already in effect yielded, to the Court of Directors, who would thus be brought into the greatest embarrassment, whilst it would have left the Fort St. George Government in the most humiliated state, and the Officers full leisure to consolidate their dangerous ascendancy.

This course was really, according to all the explanations of Mr. Petrie himself, the one for which he was an advocate; but, in the temper and state of the Army, it appears to us, that it necessarily involved an abandonment of the just principles of all Government, of the authority, credit, and efficiency of the Madras Government, of the proper controul of the Army in future, and thence an abandonment of the highest interests of British India.

We therefore thought, and still think, that Mr. Petrie essentially failed, on this important occasion, in the duty which appertained to his station; that the Court of Directors were consequently called upon to mark publicly and strongly their disapprobation of conduct like his; and that, on this and the other grounds which have been stated in the preceding pages, it was just and proper to remove Mr. Petrie from standing in succession to the Government, and from the seat he held in the Council of the Fort St. George Presidency.

We have the honour to be,

Gentlemen,

Your most obedient humble Servants,

(Signed)

C. GRANT.

W. ATELL.

C. MILLS.

A. ROBERTS.

G. SMITH.

R. C. FLOWDEN.

C. MARJORIBANKS.

I. INGLIS.

I. BEBB.

G. A. ROBINSON.

East-India House, 10th Sept. 1810.

APPENDIX.

THE Nabobs of the Carnatic had carefully kept registers of the bonds granted by them, and payments made on account of them, in offices appropriated to that purpose. After their death, to prevent those registers from being falsified or interpolated, the offices were shut up. An Officer belonging to one of them, whose salary was only sixty rupees a month, having some years ago been dismissed for misconduct, Paupiah Braminy, an intriguing native, a great dealer in bonds, and a man of notorious recorded infamy, as already mentioned in the text, offered the present Nabob a douceur of 10,000 pagodas, or £4000, for the restoration of the Officer so dismissed. Whence the obvious inference is, that he wanted to have an instrument of his own in that department. That Officer, with his successor and another person in office, were afterwards detected in a plan to introduce spurious bonds into the office, which they all confessed; and they were confined by the Nabob. This detection was made by other official servants, but has since been used by the party adverse to the Commissioners and to the Government, to destroy the credit of the office registers as authority for the validity of bonds, and to destroy also the credit of all the Durbar servants. Paupiah, by his English attorney, applied to the Supreme Court for a writ of Habeas Corpus, to discharge those persons out of the Nabob's custody, and also instituted a prosecution against the Nabob's Dewan, for falsely imprisoning them. This fact shows plainly a connexion between Paupiah and these persons. Various informations having been given to

Government,

Government, of the fabrication of Nabobs' bonds, and of a traffic in them, the Government, to check this nefarious practice, instituted the Committee of Inquiry spoken of in the text, to whom those informations were referred. This sort of previous inquiry fell within the province of Government, not of the Commissioners for Carnatic debts, whose business lay in examining claims brought before them. Among the communications referred to that Committee, were a charge against Paupiah for forgery, and also one against Reddy Row. We know not which of these charges was prior in point of time. Reddy Row, who had been the late Nabob's head accountant of the Carnatic, had, from his good character and long acquaintance with the bond transactions of those Nabobs, been, after their death, together with Mr. Battley, the English secretary of the Nabobs, consulted by speculators in the Carnatic debts, on the authenticity of bonds offered for sale. The information against Reddy Row was given by a foreign adventurer named Loyd, who did not, on his examination, seem to know what he had stated in his letter, and appeared, in this instance, to be acting under the direction of others. To support this charge, he brought two witnesses against Reddy Row, named Arnachella Row and Beem Row, who proved afterwards to be instruments of Paupiah Braminy. Their testimony was thought so improbable as to be unworthy of belief; and has since, in the most material parts, been refuted even by themselves. The Committee having, on the 25th June 1808, been directed to examine into the charge against Paupiah, for fabricating a bond for 46,000 pagodas, they on the 11th July reported that it was a forgery, and recommended that the parties concerned in it should be prosecuted. The choice of natives to assist the Commissioners in examining the Durbar Registers, in order to ascertain the validity of claims, was evidently a point of great importance. It appears that Paupiah wanted to get a man of his own into that employ. The Commissioners, however, selected for their principal assistant, Reddy Row above-mentioned, as the person most qualified, and likely to get them information. On or about the same day, the 11th of July,

Paupiah,

Paupiah, as a creditor, preferred before the Commissioners for investigating the debts, objections to a bond belonging to Reddy Row for 38,500 pagodas, as being a forgery. His witnesses were the persons already named, Arnachella Row and Beem Row. On the 12th July, a letter dated the 9th, was laid before the Commissioners, by Mr. Abbott, containing a list of bonds stated by him to be suspicious, among which was this one of Reddy Row's. The Commissioners, to whom the deed sanctioned by Parliament meant exclusively to confine the judgment of such points, on opening their commission, in the first place examined carefully into the validity of this bond, and were thoroughly satisfied, on what they deemed the clearest evidence, that it was a genuine one; not only the reality of the Nabob's signature, but the reasonable grounds on which the bond was granted, having been proved. It was here given in evidence to the Commissioners, that Paupiah had offered to Reddy Row to withdraw his charge of forgery and settle their differences, if he (Reddy Row) would undertake to support Paupiah's claims (for 25 lacs of pagodas, about one million sterling). On the 20th July, in consequence of the recommendation of the Committee, orders were given by Government, to the Company's law officers, to prosecute Paupiah for forgery. The Commissioners appear to have believed, that there was a design to defeat the object of their appointment, by procuring the removal, through any means, of the Officers most able to bring the truth to light; and having, in the course of their proceedings, discovered, as they thought, an extensive conspiracy for the worst purposes, they, on the 25th July, stated this case to the Government; and requested that, with a view to institute a prosecution against the authors of the conspiracy, their Minutes might be inspected by the Company's law officers. The principal party implicated here was Paupiah. He, on the same day (25th July) charged before the sitting magistrate, Mr. Maitland, Reddy Row and one of his witnesses, Anunda Row, with the forgery of the above-mentioned bond, for pagodas 38,500; of which charge the Commissioners for investigating the debts, to whose jurisdiction this question belonged, had already acquitted Reddy Row.

Paupiah's

Paupiah's witnesses here were Arnachella Row and Beem Row already mentioned. The magistrate who had before sat in rotation, had declined to commit the accused in this business, on the evidence tendered. One of the Commissioners attended Mr. Maitland, and offered to communicate to him the contradictory evidence which the same accusers had given before to them in this matter; but Mr. Maitland refused to receive the depositions taken before the Commissioners, or to examine the deposing parties himself; and, on the *ex parte* evidence of the accusers, who were themselves to have been prosecuted for perjury in support of Paupiah's conspiracy, he, on the 30th July, committed Reddy Row, and Anunda Row, who had given evidence in favour of Reddy Row, to take their trial for forgery. Mr. Maitland has since avowed himself to be a prosecutor in the same matter in which he then acted as magistrate, and to be interested in the event. The complaint of the Commissioners against Arnachella Row and Beem Row, for perjury, having been heard by Mr. Taswell, another magistrate, he committed them for trial. But Paupiah, by carrying the accusation just mentioned, before Mr. Maitland, took the start of the other side; and he and his accomplices, instead of appearing in the ignominious light of culprits on the charges of forgery and perjury, placed Reddy Row (a man who had till then passed through life with an unimpeached character) in this situation, and upon a charge too of which the proper tribunal had declared him innocent. On the representation of the whole of this case by the Commissioners, and at their request, the Government directed the law officers of the Company to undertake the defence of Reddy Row and Anunda Row. The Government did not think this merely a "squabble among individuals," as Mr. Pattison expresses it, but a public concern; yet as much clamour has been raised against the Government, for the assistance thus rendered by their order to the defendants, it may not be foreign to that part of the subject to look back to the origin of their having been consulted in regard to the forgeries which were supposed to have been committed. If this is done, it will appear that the first occasion on which
the

the Company's law officers were called to act in this business was during the Presidency of Mr. Petrie, when the investigation of the information given by the foreigner, Loyd, was committed to the Company's Advocate General and Solicitor, who thereby became officially connected with the subject of the forgeries before Sir G. Barlow's arrival. Immediately afterwards, that is on the 1st August, an advertisement was prepared, and appeared anonymously in the Gazette of the 4th, inviting "a meeting of the *bonâ fide* creditors of the Nabob, " on the 6th, on business of the utmost importance." The persons who, in consequence, met, were Messrs. Roebuck, Parry, Abbot and Maitland (the two last partners in business), Mr. Light, as *Paupiah's Attorney*, and two other individuals not named. They elected Messrs. Roebuck, Parry and Abbot, to be *representatives of the creditors of the late Nabobs*—a very numerous body dispersed in England and India, who had given no power for any such election. In the first list of Nabob's debts, made up in 1806—(the late Nabob died in 1801)—the amount of claims standing in the names of Messrs. Abbott and Maitland, as principals or agents, was £68,847. The amount standing in the name of Paupiah was £620,146. In the last account the claims of those two persons, of Messrs. Roebuck and Parry, and of Paupiah, as principals or agents (including a claim by Mr. Abbot, on behalf of a Begum, for 25 lacks of pagodas) amount to 67 lacks of pagodas, or £2,680,000 sterling, being full two-thirds of the whole amount at first estimated to be due to a most numerous list of creditors.

In the character of *representatives of the creditors*, Messrs. Roebuck, Parry and Abbott, on the 20th August 1808, addressed a remonstrance to Government, against the protection afforded to Reddy Row, by allowing him the assistance of the Company's law officers, and against the intended prosecution of Paupiah for forgery, which they said would discourage natives from coming forward to give evidence—an allegation soon disproved by the events that followed. It was alleged also, that Mr. Anstruther, the Advocate General, who had been
directed

• Dissent, 15th
October, 1809.

directed to conduct the defence of Reddy Row, was himself concerned in the property of the bond which that person was charged with having forged. Mr. Anstruther has, in our opinion, completely cleared his own honour in that matter. Mr. Elphinstone * has denied that, in these proceedings, there was any connexion between the four European creditors and Paupiah. But we conceive that the very nature and order of the events above described, irresistibly establish such a connexion; and besides, it is avowed by Messrs. Abbott, Parry and Maitland, that they paid the expense of the suit, brought in the Supreme Court, in the name of Paupiah, against Reddy Row, as it is also known that Mr. Parry was Paupiah's bail in the action brought against him and another person for perjury.

These persons were throughout leaders in the opposition raised against Government and the Commissioners for the Carnatic debts, on account of the measures adopted by them for the due investigation of those debts. Their proceedings tended to throw every thing into confusion—to discredit the Officers employed in the examination of the Nabob's registers—to discredit those registers themselves (whence, it is presumable, they could expect little support to their cause from them)—to discredit the Commissioners and the Government likewise. These persons went at length so far as to apply to the Governor General in Council for the removal of the Commissioners, and also to threaten those Commissioners with a criminal prosecution in the Supreme Court at Madras: which violent course, on the other hand, induced a very respectable body, comprehending the principal commercial characters of Madras, to bear, in a voluntary address to the Commissioners, the most honourable testimony to the uprightness of their conduct, with which also the Madras Government expressed the highest satisfaction. That Government, at last, in order to prevent the entire obstruction of the business entrusted to the Commissioners, and to check the spirit of faction, which had become very general and outrageous in the Settlement, found it necessary to interpose, by removing Mr. Maitland from the magistracy,

magistracy, which his partiality in office justly deserved ;—by requiring Mr. Parry, who remained in India on sufferance, to return to Europe ;—and by appointing Mr. Roebuck, who held considerable offices at the Presidency, to the charge of the Settlement in Vizagapatnam, said to be one of the most salubrious on the coast, where his subsequent death, at the age of 60, has been represented by some persons as murder. The opposite charges against Anachella Row and Peem Row on the one hand, and against Reddy Row on the other, came before the grand jury at the same time. They heard first the charge against Reddy Row, and found a bill ; after which they refused to go to the other charge, as involving a contradiction to what they had already found on oath. The trial lasted near a month, five days of which were lost by the intoxication of some members of the petty jury, which was in general composed of the lowest order of Europeans. The Chief Justice, having adjourned one day, to arrange his notes of the evidence, was afterwards, by indisposition, prevented from attending for several days more ; which was made the ground of an application to the grand jury, then sitting, for a charge of impeachment against that eminent magistrate. The Chief Justice summed up, in a speech of *eight hours*, drawing a result in favour of the defendants, and particularly dwelling on the documents produced by the witnesses on *both sides* from the Durbar Offices, as unanswerable and conclusive. The jury in *twenty minutes* brought in a verdict of “ Guilty.” A new trial was moved for, on the ground that the verdict was against the clear weight of evidence. But, in consequence of that verdict, other bills for conspiracy and perjury were preferred and found against Reddy Row, and Mr. Battley, one of his witnesses, who had been thirty years English secretary to the Nabobs with a fair reputation. In the first trial, the prosecutors had insisted that Anunda Row (principal witness for Reddy Row) who was stated by himself, by Mr. Battley, and others, to have been a writer in the Nabob’s Durbar in the year 1799, was indeed, at that very time, a clerk in the Cutcherry of Manargoody, near Cuddalore. It was proved, on the defence,

that

that Anunda Row at Manargoody was a different person. To investigate thoroughly, in view to the new trial, this fact on which the charge of perjury rested, a gentleman, well versed in the native languages, was sent by Government to the spot. He ascertained, from the unanimous testimony of a considerable number of the inhabitants, that the Anunda Row who had given evidence at the trial, and who was shown to them, was not the person who had resided at Manargoody. This, which seemed to fix the matter, proved, in the temper of the Settlement, adverse to the cause of Reddy Row and to Government. It was openly represented as an attempt to overawe the inhabitants of Manargoody, by the interference of Government, and such reports failed not of their effect on the public mind. On the motion for a new trial, the counsel for the prosecution insisted that it was a violation of the rights of juries, to question the verdict on the ground of any opinion given by the judge as to the weight of evidence ; which doctrine, being contrary to the current of authorities for the last half century, was resented by the Chief Justice, as an attempt to influence the by-standers, among whom were many of the special jury already struck for the approaching trials. A clamour for the rights of juries was raised, and every effort used to inspire a distrust of the Chief Justice, who, having delayed a decision on this notion, as the other trials nearly connected with it were coming on, a second presentment against him, tending to impeachment, was laid before the new grand jury. The Chief Justice, on the trial of Mr. Battley, which lasted several days, told the special jury they could not find the defendant guilty, unless they could make up their minds to the proposition, " that the whole inhabitants of Manargoody, and the whole " witnesses from the Durbar, were perjured ;" and unless the whole body of documents, which were not impeached in evidence, should by mere presumption be set aside as forgeries. The special jury found, however, Mr. Battley guilty of perjury, and recommended him to mercy, which seems not a very consistent proceeding. It is also said that the jury were not, in fact, unanimous in their verdict.

The Chief Justice declared his determination to pass no judgment in either of these causes ; but to transmit them, as they stood, with his report on them, for the determination of His Majesty.

His Majesty has been advised to grant a pardon to the persons against whom the verdicts were passed, which, as we understand, was the only way open to him of supporting the part taken by the Chief Justice.

F I N I S .

R E P O R T
OF THE
PROCEEDINGS
OF THE
SUPREME COURT OF JUDICATURE
AT FORT WILLIAM IN BENGAL,
IN ITS
ADMIRALTY JURISDICTION;
IN THE CASE
OF
GEORGE COLLIER as well for himself as for the KING,
VERSUS
THE CUTTER DISPATCH

On TUESDAY; the 4th February 1817;

*Compiled from the Notes of different Gentlemen who attended at the
Trial: and carefully corrected and revised.*

CALCUTTA:
PRINTED, BY DESIRE AND ON ACCOUNT OF THE MERCHANTS
OF THIS CITY, BY T. WATLEY.

1 8 1 7.

I N T H E
SUPREME COURT OF JUDICATURE
AT FORT WILLIAM IN BENGAL.
 ADMIRALTY SIDE.

GEORGE COLLIER as well for himself as for the KING,
 VERSUS
The CUTTER DISPATCH.
Tuesday ; the 4th of February, 1817.

MR. MACNAGHTEN, as junior Counsel for the Promoveut, opened the pleadings in this important cause. The Libel, he said, was filed on the 30th of January; and set forth in substance, that the said Cutter *Dispatch* was built at the port of Calcutta, and at the time of her being seized, was owned by one Mathew Smith, and commanded by one Thomas Phillips, both British subjects; that, before the time of the said seizure, she had come from the Port of Batavia at Java in Asia, to the Port of Calcutta in the English Plantation of Bengal, and there, on the 20th of January 1817, had loaded and taken on board, amongst other articles, twenty-five bags of Sugar, one chest of Indigo, sixty-six pieces of Red-wood (being a dying wood,) two bales of Tobacco, and six hundred bags of Rice, of the growth, production and manufacture respectively of Bengal; and that before the loading of the said goods or commodities, no bond had been given to or taken by the Governor of the said Province of Bengal, nor any certificate produced, that any such bond had been given to any Officer of the Customs in England, Ireland or

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Wales

Wales, or the Town of Berwick-upon-Tweed, as required by the terms of certain Acts of Parliament, passed respectively in the 12th year of Car. 2, the 22d and 23d years of the same reign, and the 3d and 4th of Queen Anne; and that the said Cutter and her Cargo were therefore liable to forfeiture, under and by virtue of the said several Acts of Parliament. The Libel concluded, by praying for condemnation in the usual form.

Mr. COMPTON, as junior Counsel for the Impugnant, recited the several heads of the Answer, admitting the facts charged in the Libel, and referring the matters of law therein set forth, to the judgment of the Court.

Mr. EAST, the senior Counsel for the prosecution, then spoke to the following effect. In having to address their Lordships, he said, on a case so arduous and important, a case so important in itself, and so vitally important to the interests of the community, and more particularly to the interests of the commercial part of Calcutta, it were an absurd affectation in him to pretend, that he did not feel oppressed, he might almost say, overpowered by the weight of the task which it had fallen to him to undertake. But however painful might be the duty, he felt himself bound to call on their Lordships, for the confiscation of the vessel and cargo now before them. This suit was founded on the provisions of the Statute of the 12 Car. 2, c. 18, and also of another Act that of the 22d and 23d of the same reign, c. 26, and one of the 3d and 4th Ann. c. 5. Of these Statutes, the first was certainly the most important, and was that indeed on which the two others, and he might add almost every other Law which had been since

since passed relating to our Navigation, hinged, In the next Act, that of the 22d and 23d Car. 2, almost the only material alteration was with regard to Ireland; the provisions of this Act virtually amounting to an exclusion of that country from all participation in any part of the commerce carried on between the Plantations of England and the mother country, to which, by the Act of the 12th of Car. 2, the Legislature had admitted her. This was the only essential particular, in which the Act of the 22d and 23d Car. 2, had altered the enactments of the original Statute of Navigation passed in the 12th year of that reign: nor had it added indeed at all to the provisions of the latter, except by extending the penalty in case of contravention to the whole of the lading of the offending vessel as well as to the boat itself, and by giving to Courts of Admiralty the power of trying all offences in contravention of that Act. And this being an offence committed in a British Port in Asia, it properly came under the cognizance of their Lordships in their Admiralty jurisdiction.

Here his Lordship the Chief Justice observed, that, by the Charter, all Admiralty jurisdiction, as exercised by the Courts of Admiralty in England, was given to this Court.

Mr. EAST proceeded. The last Act on which the Libel was founded, was that of the 3d and 4th of Ann, which merely enlarged that of the 12th Car. 2, by including the articles of Rice and Molasses among the enumerated commodities, for which bond was required to be given previous to shipment, and in subjecting vessels taking on board such articles without having given bond, to the same

same penalties which the Act of the 12th Car. 2. had provided for similar offences with respect to the goods therein particularly specified. The legality however of the present seizure depended, he might say, wholly on the two last clauses (the 18th and 19th) of the 12th Car. 2. c. 18. By the first of these it was enacted ; that “ no Sugar, Tobacco, “ Cotton-wool, Indigoes, Ginger, Fustick or other “ Dying Wood, of the growth, production, or manufacture of any English Plantations in America, Asia, or Africa, shall be shipped, conveyed “ or transported from any of the said English “ Plantations, to any land, island, territory, dominion, port, or place whatsoever, other than to “ such other English Plantations as do belong to “ His Majesty, his heirs and successors, or to the “ Kingdom of England or Ireland, or Principality “ of Wales, or Town of Berwick-upon-Tweed.” The next Section then went on to enact ; “ that “ for every ship or vessel, which shall set sail out “ of or from England, Ireland, Wales, or Town “ of Berwick-upon-Tweed, for any English “ Plantation in America, Asia or Africa, sufficient “ bond shall be given with one surety, to the “ chief Officers of the Custom House of such “ port or place from whence the said ship shall “ set sail, to the value of one thousand pounds, if “ the ship be of less burthen than one hundred “ tons; and of the sum of two thousand pounds, “ if the ship shall be of greater burthen, that in “ case the said ship or vessel shall load any of the “ said commodities at any of the said English “ Plantations, that the same commodities shall be “ by the said ship brought to some port of England, Ireland, Wales, or to the port or town of “ Berwick-upon-Tweed, and shall there unload “ and

" and put on shore the same, the danger of the
 " seas only excepted: And for all ships coming
 " from any other port or place to any of the afore-
 " said Plantations, who by this Act are permitted
 " to trade there, that the Governor of such Eng-
 " lish Plantations shall, before the said ship or
 " vessel be permitted to load on board any of the
 " said commodities, take bond in manner and
 " to the value aforesaid for each respective ship or
 " vessel, that such ship or vessel shall carry all the
 " aforesaid goods that be laden on board in the
 " said ship, to some other of His Majesty's English
 " Plantations, or to England, Ireland, Wales, or
 " Town of Berwick-upon-Tweed: And that e-
 " very ship or vessel, which shall load and take on
 " board any of the aforesaid goods, until such
 " bond given to the said Governor, or certificate
 " produced from the Officers of any Custom House
 " of England, Ireland, Wales, or of the town of
 " Berwick, that such bond have been there duly
 " given, shall be forfeited, with all her guns,
 " tackle, apparel, and furniture."

These then were the two clauses, which
 ordained that bond should be given by all
 ships engaged in the plantation trade, pre-
 vious to shipping the commodities in question.
 And the cause of the seizure and libel, and, he
 was to hope, eventually of the condemnation in
 this case, was, that no bond had been given by
 the master of this Cutter the Dispatch, for the
 delivery at a British port, of the articles, when
 it was admitted in his answer that he had received
 on board. It was admitted in that answer, that
 a certain quantity of Indigo, of Sugar, of Dying-
 Wood and of Tobacco, all of them among the
 articles enumerated in the 18th and 19th Sections
 of

of the Navigation Act, and of Rice which was subjected to the same restrictions by the Statute of Anne, had been shipped on board this vessel, without any bond having been previously given, in the terms of these Sections, to the Governor of this territory, or, to use the words of the Act, to the Governor of *this English Plantation in Asia*,—for such he held it to be; and that neither had any certificate of such bond having been given in England, been produced to the local Government here, previously to the goods in question being laden on board. These facts therefore being admitted, and supposing the Acts of Navigation to apply to this country, (which he should endeavour presently to shew, that they did,) the case would undoubtedly come within the penalties of the Statute, under the two clauses which he had read, and the vessel must therefore be liable to condemnation. It was further admitted, that the vessel had been built here; that she belonged to, and at the time of her seizure was commanded by; British subjects; and also, that, previously to loading the goods in question, she had come to this port from Batavia.

CHIEF JUSTICE. “ It does not, I think, distinctly appear on the pleadings, how this vessel came to be here at the time of her seizure. It is stated, that she came from the port of Batavia; but what was the occasion of her being at Batavia, we are not informed. There seems therefore something wanting to her history. I should collect from the facts stated, of her belonging to this port and of her owner residing here, that she had originally sailed from this port, and she had come from Batavia on a return voyage; but this is not expressly alleged.”

Mr,

Mr. EAST. " There are two distinct descriptions of vessels, my Lord, liable to seizure under these Sections of the Navigation Act. First, vessels coming from Great Britain, not having given bond there. Secondly, vessels coming from any other port or place, and not giving bond here previous to shipping any of the enumerated commodities "

CHIEF JUSTICE. " That rule, in its generality, would include foreigners as well as British ships."

ADVOCATE GENERAL (For the Impugnant.) " No, my Lord; they must be British-built ships: for, by the 1st Section of the Act, the trade to and from the Plantations is expressly limited to British ships; and the second part of the clause relating to bonds, directs such bonds to be taken 'for all ships coming from any other port or place, who by this Act are permitted to trade there,' and for no others."

CHIEF JUSTICE. " Would it not be desirable to amend the Libel, by stating, that this is a Calcutta-built ship, that she had proceeded from Calcutta to Batavia, and had returned again from Batavia to Calcutta, previous to the seizure which we are now trying?"

Mr. EAST however submitted, that, under the very general terms made use of at the conclusion of the 19th Section of the 12 Car. 2. c. 18, it was not necessary to have introduced at all into the libel, the fact of the vessel's having come from another port, but that he had introduced it rather *ex majori cautela*, since such was the actual case, than because he thought it necessary to be stated. He then proceeded to read that part of the Section,

which applied to this point. The bond was there required, of *all vessels* coming to any English plantation, *which by this act were permitted to trade there*. Now, this was a Calcutta ship; and it would be found therefore, that she was one of the vessels to which the Act gave this privilege.

CHIEF JUSTICE. "It might not perhaps ultimately make any difference in the issue; but I think, the question would be more distinctly before the Court, if the Libel were amended as I have suggested."

Mr. EAST. "The last clause of the Section, my Lord, is general; it enacts, that *every ship or vessel*, without any exception, which shall take on board the goods in question without giving bond, shall be liable to forfeiture."

CHIEF JUSTICE. "It might be better then perhaps, to strike out of the Libel altogether, as irrelevant to the charge before the Court, the passage which state this vessel to have come from Java, and to insert in its place, that she was commencing a new voyage from Calcutta. It is clear, that Java was not her home."

Mr EAST, "The obvious inference on the face of the Libel is, that she was commencing a new voyage, but the fact does not appear to me to be material either way. It may however be very easily amended, if your Lordship should think it necessary."

Supposing then the declaration of the facts to be amended in the manner suggested by the Bench, it was clear, continued Mr. EAST, that the case of this vessel and cargo came under the penalties of the Act of the 12 Car. 2, and that they

they were liable to forfeiture, for not having given bond, if that Act extended to this country, and if this were an *English Plantation*; for he admitted the latter also to be a necessary circumstance to constitute the offence charged. Whether the Navigation laws did apply to this country or not, was certainly a great, and most important question. Mr. EAST however believed, that their Lordships could entertain no doubt, but that they did so apply, and were now in full force in this country, unless they should find them to have been repealed or contravened by other subsequent Statutes.

The first observation which struck one, in adverting to this Act of 12 Car. 2, so well known by the name of the Navigation Act, was, that it was a general law, and one which had always been considered by our ablest statesmen as forming the basis and ground-work of the whole navigation system of England. As such it was uniformly recited and referred to, in almost every succeeding Act of Parliament relating to maritime affairs. We were bound therefore to treat this Statute with peculiar respect, as being the foundation of that naval strength, which had enabled Great Britain to sweep the seas, and to maintain for so long a period that glorious pre-eminence on the ocean; which her military triumphs had more recently procured for her by land. To this Act, Mr. East contended, our country was indebted for that superiority over the other nations of Europe, under which she was now flourishing. It was not without reason therefore, that this Act had been treated by Mr. Reeves and other eminent writers who had considered the subject, as a political rather than

a commercial ordinance. In all its principal bearings indeed, its purpose was clearly political. It had, as it appeared to Mr. East, three principal objects in view: the first was, the encouragement of English shipping; the second, the encouragement of English mariners; and the third, the protection and augmentation of the King's customs and revenue. He admitted indeed, that this law did not at this day remain entire in all its parts. Many of its provisions had certainly been qualified, and others repealed altogether; and it did not therefore now stand as it had done when it was first enacted. But it still continued to form the basis of our maritime code, and to be recognized as such in every Act of Parliament. The origin of that system, which this Act contributed to establish, was of very antient date; and some of its most vital principles were to be found in our earliest Statutes. An Act of the 1st Henry 7, prohibited the importation of the Wines of Guienne, in any other but an English, Irish or Welchman's ship, which was to be navigated for the most part by mariners of one or other of those nations: and this Act was revived in the next Parliament, by Statute 4, Henry 7, c. 10, which extended the prohibition to the article of Wood of Thoulouse, and further required, that ships importing the commodities in question, should be commanded by an English master. These two were almost the first laws in the Statute-book, which related to the Navigation system of England. They shewed, that, even at that early period, the same objects and principles were contemplated, which afterwards formed the basis of this Statute of Car. 2. But there was also another Act of Navigation, bearing the same character and of much nearer date,

date, having been passed in the year 1651, during the time of the Commonwealth, and the first Section of which enacted as follows; viz. "That no goods or commodities whatsoever, of the growth, production, or manufacture of Asia, Africa, or America, or of any part thereof, or of any islands belonging to them, or any of them, or which are described or laid down in the usual charts or maps of those places, as well of the English Plantations as others, shall be imported or brought into this Commonwealth of England, or into Ireland, or any other lands, islands, plantations, or territories, to this Commonwealth belonging, or in their possession, in any other Ship or Vessel whatsoever, but only in such as do truly, and without fraud, belong only to the people of this Commonwealth, or the plantations thereof, and whereof the Master and Mariners are also, for the most of them, of the people of this Commonwealth, &c." Here then in this Act, the policy of which was particularly directed against the extensive carrying trade at that time enjoyed by the Dutch, here were to be found the great principles of the Act of the 12 Car. 2. And Mr. East begged particularly to call the attention of their Lordships, to the word "Asia" in that Section of the Act which he had just read, because it would perhaps serve to illustrate to their Lordships the intendment, which he should submit the same term to have in the Act now in question. What *English Plantations* or other possessions in Asia, Great Britain at that time had, he was at a loss to know. The inference therefore was, that the term was intended to have a prospective application.

CHIEF JUSTICE. " The legislature were here
 " drawing the distinction, between the produc-
 " tions of the three more distant quarters of the
 " globe and those of Europe ; and for that rea-
 " son, they employed these sweeping terms."

The island of Ternate, Mr. EAST believed, had been taken by us from the Spaniards before that time, though it was also true, that it was abandoned as an untenable prize almost immediately afterwards. With that exception, he knew of no part of Asia to which this expression of the Act could have reference, as belonging to the crown of England in 1651. And the Act of the 12 Car. 2, was in this respect under the same predicament ; for true it was, that up to the time of passing that Act, no English Plantations existed in Asia. But there was a marriage treaty, Mr. EAST observed, at that time in contemplation, between Charles the 2d and the Infanta of Portugal ; and by a private article of that treaty, the dower of the Portuguese Princess was (besides a large sum of money) to consist of the settlements of Tangier and Bombay. Accordingly, in pursuance of this treaty, the island of Bombay was in the succeeding year (1661) transferred to the crown of England. The Navigation Act, their Lordships would observe, was passed in the Parliament of 1660 ; and it appeared highly probable, that the marriage treaty in question, though not concluded, was then not only in contemplation, but in the actual course of negotiation ; and with that in view, it might not unfairly be inferred, that the Act did contemplate prospectively the circumstance of the English crown being in possession of *English Plantations* in Asia.

But

But however this point might stand in regard to the Act of the 12 Car. 2, there were subsequent Acts of Parliament, which employed the very same words, in re-enacting and extending the provisions of that Statute. In particular, the Act of the 7 and 8. Gul. 3, in that clause which related to the building and manning of ships engaged in the colonial trade of Great Britain, made mention of "Plantations or Colonies to His Majesty being long in Asia." This Act was passed in the year immediately preceding that of the first Charter granted to the East India Company by the Crown under the authority of the legislature, and at a time when the Crown did certainly possess *Territories* at least in *Asia*, with which a commerce to a very considerable extent was carried on, and deemed so valuable, that the purchase of it was thought worth two millions of money; for that was the sum paid by the new Company for the exclusive liberty of trade granted to them by Charter under the Act of the 9 and 10 Gul. 3. There could be no doubt therefore, he apprehended, but that we had territories then in India, considerable both in respect to number and with reference to the value of the commerce to be derived from them; and those territories were unquestionably included in this Act, as they were also in many other subsequent Acts, containing the same or similar expressions with respect to our Indian possessions, and some of them at the same time directly referring to the Act of Navigation.

Mr. EAST then returned again to the consideration of the Act of the 12 Car. 2; and adverted particularly to the 1st, 3d and 4th Sections of that Act, which he believed would be admitted to refer to the British possessions in this Country, as well

well as to all the other dominions of the Crown abroad; or if not so admitted, he should be easily able to prove that they did. The title of the Act sufficiently shewed, that it was of a political nature. It was entitled, "An Act for the encouraging and increasing of Shipping and Navigation." That was the great object, which this Statute professed to have in view. In the first Section it was enacted; that "No goods or commodities whatsoever shall be imported into, or exported out of any lands, islands, plantations, or territories to His Majesty belonging, or in his possession, or which may hereafter belong unto, or be in the possession of His Majesty, his heirs and successors, in Asia, Africa, or America, in any other Ship or Ships, Vessel or Vessels whatsoever, but in such Ships or Vessels as do truly and without fraud belong only to the people of England or Ireland, Dominion of Wales, or Town of Berwick upon-Tweed, or are of the built of, and belonging to any of the said lands, islands, plantations, or territories, as the proprietors and right owners thereof, and whereof the Master and three-fourths of the Mariners at least are English." So far, the provisions of this Act were clearly prospective; they embraced not only the settlements then belonging to the British crown, but all which might thereafter belong to it. The 3d Section went on to prohibit the importation of foreign produce into any of His Majesty's European dominions, in any ships except such as should be English built, and owned and navigated by English subjects. And the 4th Section went to limit the importation of such foreign produce even in English ships, to those

those articles only which should be shipped from the places of their growth or manufacture, or from those ports where they can only or usually have been first shipped for transportation. Now, this last Section was distinctly recognized to extend to East India commodities, by a subsequent Section (the 13th) of the very same Act; which provided, "That this Act, or any thing therein contained, extend not, or be meant to restrain, the importing of any *East India commodities*, laden in English-built shipping, and whereof the master and three-fourths of the mariners at least are English, from the usual place or places for lading of them, in any part of those seas to the Southward and Eastward of *Cabo Boa Speranza*, although the said ports be not the very places of their growth." Here then was an express qualification of another section of the Act, as it applied to the East Indies,—equivalent, Mr. East contended, to a declaration, that the Act generally did apply to this country.

In like manner, if we looked to the Act of the 21st Geo. 3, c. 65, s. 33, that Statute would also be found to recognize the Act of the 12 Car. 2, as applicable to the East Indies. The passage to which he alluded, was as follows; viz. "And whereas doubts have arisen, whether, agreeable to the provisions contained in an Act, made in the twelfth year of the reign of His Majesty King Charles the Second, intituled, An Act for the encouraging and increasing of Shipping and Navigation, goods and merchandize can lawfully be exported to, and imported from, the East Indies and places beyond the Cape of Good Hope, in ships and vessels the property of the said United Company, by reason that many for-
C "reigners

"reigners are proprietors of stock of the said
 "United Company : and whereas it is fit and pro-
 "per, that ships belonging to the said United
 "Company should be considered as British ships ;
 "be it therefore enacted by the authority afore-
 "said, that *all Ships and Vessels belonging to the*
 "*said United Company*, whether built or purchased
 "by the said United Company, *shall be consider-*
 "*ed, deemed, and taken to be British ships within the*
 "*true intent and meaning of the said Act of the twelfth*
 "*year of the reign of His Majesty King Charles*
 "*the Second* ; and the said United Company in
 "respect thereof shall be entitled to all and eve-
 "ry the privileges and advantages in and by the
 "said Act given and granted to the owners of ships
 "wholly belonging to British subjects, the same
 "being navigated in the manner prescribed by
 "the laws now in being respecting British-built
 "ships, any thing in the said Act of the twelfth
 "year of the reign of his Majesty King Charles
 "the Second in any wise notwithstanding." Here
 therefore, Mr. EAST said, was a distinct application
 by the legislature of the Navigation Act, in di-
 rect reference to the Company's territories in the
 East Indies.

Another example of the same sort would be
 found in an Act of the 41 Geo. 3. c. 37, which
 was passed in 1801, for the protection of East In-
 dia ships importing Rice into the United King-
 dom. This Act also mentioned the Act of the 12
 Car. 2, and qualified some of its provisions, there-
 by recognizing it as applicable to this country.
 Its preamble set out as follows ; viz. "Whereas
 "it is just and expedient, that provision should be
 "made for the lawful importation of goods load-
 "ed on board certain ships which may arrive from
 "the

" the East Indies, with cargoes of Rice or other
 " grain, and for the return voyage of such ships
 " to the East Indies, although they may not be
 " entitled to the privileges of British ships. &c." It then went on to enact, that " It shall and may
 " be lawful to and for any ship or vessel, *where-*
 " *ever built,*" (another qualification, their Lord-
 ships would observe,) " and belonging in
 " part or in whole to His Majesty's subjects,
 " or belonging to any person of any kingdom
 " or state in amity with his Majesty, however the
 " same may be navigated, &c. which shall have
 " cleared out from any port in the East Indies,
 " on or before the 1st day of September
 " 1801, laden with Rice or other grain, with
 " the licence of the East India Company, to im-
 " port and enter all such Rice or grain, free from
 " all duties whatsoever, into the port of London." The Section then went on to authorize the im-
 portation of other goods and merchandizes to a
 certain extent on the said ships, and the exporta-
 tion on the same to any place in the East Indies,
 for one voyage only, of "any goods, wares, or
 "merchandizes, which may be lawfully exported
 " from Great Britain to the East Indies, in like
 " manner as if such ships respectively had been
 " duly entitled to all the privileges of British ships,
 " navigated according to law; *any thing in an*
 " *Act passed in the 12th year of His Majesty King*
 " *Charles the Second, entitled, An Act for encour-*
 " *aging and increasing of Shipping and Navigation,*
 " *or any other law, statute or usage, to the contrary*
 " *thereof in any wise notwithstanding.*"

These examples therefore sufficiently shewed
 the notion which the legislature at least entertain-
 ed, with respect to the applicability of the law in

question to the trade of this country. Their object in these particular cases was to permit a certain trade, that was in contravention of some of the provisions of the Navigation Act; and with that view, it appeared, they had judged it necessary to repeal those provisions, in so far as they applied.

He had said, that the principal objects of this Act were three in number; viz. the encouragement of English shipping, the increase of English mariners, and the augmentation of the revenues. And the provisions of the two last Sections (the 18th and 19th of the Act, he thought applicable chiefly to the last of these objects; viz. to the augmentation of the customs and revenue of England. Mr. EAST then proceeded to recapitulate again the two sections in question. The words here used to express the countries, which the legislature intended to include within the provisions of these two sections, were certainly, he must acknowledge, somewhat different from those employed in the preceding sections of the Act; in so far as the expression in the 18th and 19th Sections was confined to the term "English Plantations" only. The same term "Plantations" was used indeed in the preceding sections of the Act also, but coupled with other words of more general signification, such as "lands and territories." The question therefore in the present case came certainly at last to this; viz. whether the British possessions in the East Indies be "Plantations," within the strict meaning of that word as employed by the legislature; for it was not enough, that they should be only lands and territories belonging to the crown. He trusted however, that he should be able to shew, that Par-
liament

liament in these sections had employed the word Plantations, as equivalent to and embracing all the other designations of country particularized in the first clauses of the Act. And here he would, in the first place, observe, that the words of these sections were plainly prospective, and must be construed to comprehend, not only the English Plantations which belonged to His Majesty at the time when the Act was passed, but also such as might belong to his successors. This he contended to be the case, in as much as there was a clear reference between one part of this clause and another. The section set out by declaring, that none of the enumerated commodities, " of the growth, production, or " manufacture of any English Plantations in Ame- " rica, Asia or Africa, &c." and so far certainly the word English Plantation stood alone; but the clause then went on to enact, that none of the said articles " shall be shipped, carried, conveyed or " transported from any of the said English Plan- " tations, to any land, island, territory, dominion, " port or place whatsoever, other than to such " other English Plantations as do belong to His " Majesty, *his heirs and successors,*" and so forth; clearly meaning to convey, as Mr. EAST apprehended, by the phrase " heirs and successors," that any lands afterwards to belong to the crown of England, should also come within the operation of this clause.

CHIEF JUSTICE. " The words are, ' Such other " ' English Plantations as *do* belong to His Majes- " ' ty, his heirs and successors.' The expression " ' do belong,' seems to refer to those which be- " longed to him at that time. May it not be ta- " ken to imply, Plantations then belonging to the " King,

" King, especially as contrasted with the prospective words used in the first and other clauses?"

MR. EAST. "Certainly, My Lord, the sentence is not very grammatical; the verb is in the present tense, though by the words 'heirs and successors,' a future application is given to it.

CHIEF JUSTICE. "I may say with propriety enough, 'such a possession belongs to me and my heirs.' The expression merely implies inheritance. The same words however are used in subsequent Acts, after the crown had acquired possessions in this country."

At all events, continued Mr. EAST, the want of a prospective expression in this part of the sentence, seemed to be a mere accidental omission; the section went on in all other respects, just as in the first clause of the Act; and if there was any such distinction as had been suggested, he must think it of very little weight indeed in the present argument. The clause then went on to specify the forfeitures, that were to ensue in case of a breach of its provisions; enacting, that one moiety should go "to the King's Majesty, his heirs and successors," (thus repeating the phrase before used,) and the other moiety to the informer. Still however, Mr. EAST said, it must be admitted, that the question certainly turned on the meaning of the term *English Plantation*, and on his being able to prove this country to be an English Plantation.

CHIEF JUSTICE. "To bring the case within these sections of the Act, this must be an English Plantation, whatever sense those words may bear."

This part of the Act, Mr. East continued, contained the provisions relating to revenue; and its policy

policy in that respect would be found to apply to this country ; because the articles here enumerated, were in fact the staple commodities of trade in India as well as in our American colonies. Therefore the main object of this section, the increase of his Majesty's customs, was equally concerned in the one case as in the other. The legislature did not look by these enactments, to deprive the colonies of England of the liberty of trading with each other ; but it meant to restrict their trade to that between colony and colony, and between the colony and the mother country ; and it meant, above all, to exclude foreign countries from the benefit of trading with those colonies, and from holding any intercourse with them except through the medium of the mother country. As applied to India, they went to shut out all intercourse with China (for instance,) or with the ports of the Arabian Sea ; for those trades, he admitted, must be considered as embraced within this prohibition of the Act. The legislature, he said, had undoubtedly in its contemplation, to exclude these and all other foreign states, from any participation in this Plantation trade. The mother country gave the benefits of her protection and commerce to the colonies, provided the colonies returned an equivalent benefit to the mother country, by sending all their produce thither, in order that England might derive a revenue from the duties levied thereon, before that produce should pass into the hands of foreigners. It was to prevent the Princes of other countries from benefiting by those customs, to which the King of England alone has a just claim, that these Sections were enacted. If the staples of this country be sent to Canton, Mocha, or the Persian Gulph, it was obvious, that His Majesty
could

could derive no benefit from such a traffick, but that it would serve to increase the revenues of the Emperor of China, or of the Arabian Prince, into whose countries respectively the goods in question might be imported. The purpose of the law, therefore, he said, was to prevent these or the rulers of any other countries, from obtaining those duties on the produce of English colonies, which belonged of right to the King; and were this law now to be put in force, it was obvious, that the Emperor of China (for instance) would lack thereby the benefit of those revenues, which he now derives (and perhaps to the prejudice of England) to a considerable extent from the commerce of India, in consequence of the non observance of the law in question. And this was the very benefit, Mr. EAST contended, which the legislature contemplated by these sections of the Act to secure to the mother country, to the exclusion, he did not mean to say of the Emperor of China in particular, but of any other foreign country or third party whatsoever. The object was, to increase the customs of the colonies themselves and of England, and to prevent foreigners generally from sharing in that branch of our revenues.

Mr. EAST now came to the consideration of the term 'English Plantation,' and proposed to shew, that it was applicable to this country: for, if that were not the case, he observed, himself and his colleague were then not in a condition to maintain this cause. Now, to him it seemed, that this term was not only used to signify, a settlement for the purpose of raising produce, but *any place out of Europe, (that is, in Asia, Africa or America,) where a Colony or set of Englishmen have been planted or settled, or where Englishmen are residing, for commercial*

cial purposes. In strict etymology, perhaps the literal meaning of the word Plantation had reference merely to the planting of seeds or roots. But metaphorically it was applied to the planting of men in a foreign country, for the purposes of trade; and it was in that sense their Lordships were to consider it. He believed also, that, under the authority of one of the cases which he should cite on this subject, he must add another necessary qualification, to constitute an English Plantation within the meaning of this Statute, viz. that it be a place *belonging to the Crown of England.*

Mr. EAST then proceeded to call their Lordships' attention to the case of Lubbock and Anor. v. Potts, 7. East's Term Reports, p. 449; in which this term "Plantation" was discussed. The question in that case was, whether Gibraltar was an English Plantation within the meaning of the Navigation Act, so as legally to admit of British West India produce being shipped thither direct from Trinidad. In that case, Lord Ellenborough said, "The term Plantation, in its common known signification, is applicable only to Colonies abroad, where things are grown, or which were settled for the purpose principally of raising produce." This definition was certainly not strictly the same in terms with that which Mr. East had submitted; but the sequel went on to shew, that Lord Ellenborough attached substantially a similar interpretation to the word. He went on to say, that the term "Plantation has never in fact been applied to a place like Gibraltar, which is a mere fortress and garrison, incapable of raising produce, but supplied with it from other places." This then was the ground of the decision in this case;

that Gibraltar could not be considered a Plantation, because it was a mere fortress and garrison incapable of raising produce. Nobody went there to trade, or to settle for the purposes of trade.

CHIEF JUSTICE. "That is not exactly the case. There are many English, who reside at Gibraltar, though the Governor can send them away when he pleases. There is a large population there."

MR. EAST. "What I mean, my Lord, is, that Gibraltar is not a place of trade, and that no trade is carried on there ;—that no person commercial or civil is settled there."

CHIEF JUSTICE. "It may be said, (to borrow a metaphor from the term Plantation,) that no one is permitted to take root there."

MR. EAST. "It is a mere military garrison, and persons are allowed to reside during sufferance and to die there, but not to take root in any other sense. It is no Plantation therefore, in either signification of the word, whether as applied to commodities or men."

CHIEF JUSTICE. "There is nothing grown or manufactured there, I believe."

MR. EAST then went on to observe, that this subject was largely discussed by Mr. Reeves, in his excellent Treatise on Shipping and Navigation ; where, in the absence of any decisions of the Courts, he had collected together all the opinions of the most eminent lawyers which he could find, as to different British possessions abroad being Plantations or otherwise ; and one of the cases in particular which he had adduced, that of Surat, completely applied to the question now before their Lordships. The first example to which Mr.

EAST

EAST should advert, was that of Newfoundland, at p. 93. "Thus it became a question," he said, "whether Newfoundland was a Colony or Plantation? A ship, being a French prize, but not legally condemned, was owned and manned by English, and had imported fish and oil from Newfoundland; but by Stat. 7 and 8 Will. 3, no importation can be made from any Colony or Plantation, except in an English built ship. This importation was thought by Sir Thomas Trevor to be against that Statute, inasmuch as the ship was not condemned in some Court of Admiralty; but Sir John Hawles, in an opinion he gave on the same point, was more explicit. He says, he should have thought Newfoundland was neither a Colony nor a Plantation belonging to His Majesty, having no settled Governor there, nor the King pretending to any dominion therein, as he could be informed of; but since Stat. 15, Car. 2. c. 7. and 25. Car. 2. c. 7. reckoned Newfoundland among his Majesty's Plantations, he thought this ship being a prize, though not legally condemned, and having been trading between England and Newfoundland, was forfeited by Stat. 7 and 8. Will. 3, c. 22. Whatever doubt there might then have been of the King's sovereignty in that island, there could be none after the treaty of Utrecht, by which the King of Great Britain was acknowledged to have the dominion and sovereignty of that island. From that time it unquestionably belonged to his Majesty, and there could be no doubt but respecting the description of possessions under which it should be classed; and a notion long prevailed, that this island, being used merely for the fishery, was not a Colony or Plantation. Yet this

"question was never raised, but it was answered, that this island was to all intents a Colony and Plantation." Here then was an instance of a foreign place, which, though used only as a fishery, (a qualified use, which was supposed at one time to exempt it from the general rules of our colonial system,) and although in early times British subjects were not permitted by law permanently to reside there, but only went thither during the summer season, was yet held to be a Plantation, merely on the ground of its being a possession of the crown, resorted to for the purposes of trade.

CHIEF JUSTICE. "I understand the opinion cited by Mr. Reeves to be, that originally Newfoundland never was considered as a Plantation, and that it did not become so, until classed as such by legislative declaration."

MR. EAST. "I rather think, my Lord, that his argument proceeds on the reason of the thing."

CHIEF JUSTICE. "There are now persons, who dwell there altogether."

ADVOCATE GENERAL. "That very gentleman, Mr. Reeves, my Lord, resided on the island as Chief Justice."

CHIEF JUSTICE. "But he never colonized there, I believe. He was resident only for some months during the year. At first, indeed, I believe, no person remained. Orders used to be given to the Admiral on the station, to remove all persons engaged in the fishery, after a certain time of the year, on account of the inclemency of the winter season. But, as in time it was found that the danger might be lessened or guarded against, and that there was
" more

" more personal inconvenience frequently incurred in attempting to remove the people, than in suffering them to remain there, permanent settlers came by degrees to fix themselves on the island."

MR. EAST. " But even then, when there were no settlers, Mr. Reeves seems to think, that to all intents and purposes it was an English Plantation, though there was no produce or manufacture, but only a fishery there."

CHIEF JUSTICE. " Does he refer to any particular case, with reference to Newfoundland?"

MR. EAST. " No, my Lord; only to opinions."

CHIEF JUSTICE. " There are points of public policy mixed with law, which have been frequently the subject of reference to the law officers of the crown. Very probably, Mr. Reeves collected his opinions from the result of such references."

MR. EAST. " There are very few decided cases, my Lord, indeed, which bear at all upon the point in question. Mr. Reeves has therefore collected these opinions, as to what places were, and what were not Plantations, stating the reasons for the classification of each respectively."

The next example cited from Mr. Reeves's Treatise, page 96, was that of Honduras:—

" It was material to ascertain," he said, " whether Honduras was a Plantation to His Majesty belonging, or in his possession; for it had become a practice for ships to fit out from Jersey,

"say, to fetch logwood from thence, and carry it
 "directly to France, Holland, and other parts
 "of Europe; which, being an enumerated
 "commodity, could not be done from a Planta-
 "tion to His Majesty belonging, consistently with
 "the 18th Section of the Act of Navigation.
 "This question was put to the law officers, after
 "the treaty of peace in 1763; in the 17th article
 "of which, the King had agreed to cause all the
 "fortifications erected there by British subjects
 "to be demolished, but the King of Spain agreed
 "that the British subjects, or their workmen,
 "should not be disturbed or molested in their
 "occupation of cutting logwood, for which pur-
 "pose they were permitted to build and occupy
 "houses and magazines necessary for their fa-
 "milies and effects. But, notwithstanding these
 "stipulations in favour of British settlers, Mr.
 "De Grey was of opinion, that the Bay of Hon-
 "duras could not be considered as a Plantation
 "or Territory belonging to his Majesty, within
 "the meaning of the Act of Navigation, but that
 "it was a part of the Spanish territories, subject
 "to such rights and liberties therein as are stipu-
 "lated for by treaty; and that there is no law
 "subsisting to prevent an English subject, enti-
 "tled to such rights and liberties, from carrying
 "logwood, cut there, to any part of Europe."
 This case, their Lordships would perceive, did
 not bear so immediately on the main point at
 issue. The question here rather was, whether
 Honduras was a territory belonging to his Majes-
 ty, than whether or not it was a Plantation; and the
 decision was in the negative, because the fortifica-
 tions were ordered to be rased, and all sovereign-
 ty was relinquished by treaty. But it went to
 establish

establish so much of the definition which he had proposed for the term English Plantation, namely, that there should be sovereignty of the British crown over the territory in question.

The next case however, and the most important of any, was that of Surat, a place within the Presidency of Bombay, and which, their Lordship would see, was so far considered to be an English Plantation or Colony, as to entitle ships built there to the privilege of registry, as plantation-built ships. This case was thus treated by Mr. Reeves, p. 97. "Upon a late question, whether Surat was a Plantation or Colony within the meaning of Statute 7 and 8, Will. 3, so as to entitle a ship there built to have a Plantation register; it was enquired, what was the nature of the possession which the East India Company had there, and it being represented, that Surat was a port belonging to the Mogul, where several European nations have settlements, and that the English chief, by an instrument from Delhi, is Governor of the Mogul's castle, and admiral of his fleet there, but that all merchants indiscriminately build ships there, it appeared to the law officers, upon this statement of facts, that this ship was not entitled to a register. But it being apprehended this was not an accurate state of the case, further inquiry was directed; and it appeared, upon information of persons acquainted with the Company's affairs, that they have a settlement at Surat, which is governed by a Chief and Council, who are subordinate to the Governor and Council of Bombay; and, as the crown by charter has reserved the sovereignty in all settlements acquired or made by the Company, it

" was

" was conceived, the settlement at Surat is un-
 " der His Majesty's dominion. But whether the
 " King has a sovereignty, depends on the fact of
 " the Company having a territorial property in
 " Surat. And with regard to that point, it ap-
 " pears from their charters, that Sûrat, as to the
 " territorial right of the Company, was always
 " considered in the same light with Bombay it-
 " self, which is denominated *the town and factory*
 " *of Bombay*. By the Charter of Justice of the
 " 26th year of George 2, all civil, criminal, and
 " military power is given to the Company, as well
 " in the subordinate factories, of which Surat is
 " one, as in the island of Bombay itself. The
 " indenture of the 22d July 1702, conveys the
 " dead stock of the old Company to be held by
 " the new; and, enumerating what shall be so
 " considered, after Bombay, it says, ' under the
 " ' presidency of the said island of Bombay, the
 " ' factories of Surat.' It was also certified by
 " an officer of the Company, whose knowledge
 " and situation were judged to entitle him to cre-
 " dit, that the Company deem the territory of
 " all forts and factories, where they have a Pre-
 " sident and Council, as their *property*; and this is
 " the case at Surat; that the territory round the
 " whole city of Surat is *nominally* held by the Com-
 " pany as Governors for the Mogul, but that this
 " grant was made after the Company had possessed
 " themselves of it by force. Upon this statement
 " of facts, it was judged by the law officers, that
 " this was such a Plantation or Colony as entitled
 " the ship built there to a register."

ADVOCATE GENERAL. " This case went on
 " the Register Act, my Lords; and that is as large
 " in its expressions, as the first section of the Na-
 " vigation Act."

Mr.

Mr. EAST. "But here, my Lords, you see
 "Surat was considered to be a *British Plantation*
 "for that particular purpose which was at this
 "time in question; and the only doubt apparent-
 "ly entertained at all as to its being an *English*
 "*Plantation*, was whether the sovereignty over it
 "was in the Mogul or in the British crown."

CHIEF JUSTICE. "I should like to know,
 "what are the terms used in the Register Act, in
 "speaking of the countries to which the provi-
 "sions of that Act are to apply."

ADVOCATE GENERAL. "Fully as large, my
 "Lord, as those of the 1st Section of the Act of
 "the 12 Car. 2."

CHIEF JUSTICE. "Do they include, territo-
 "ries and dominions?"

ADVOCATE GENERAL. "Oh, my Lord, very
 "large indeed;—'Colonies, plantations, islands
 "'or territories, which now belong, or may
 "'hereafter belong to His Majesty, his heirs or
 "'successors.'"

There was still another case, continued Mr.
 EAST, referred to by Mr. Reeves at p. 98. It
 was that of the island of Guadaloupe, at the time
 when it was captured by the French in the
 year 1759. "A very particular question," he
 said, "respecting the King's sovereignty and pos-
 "session, arose on the occasion of the island of
 "Guadaloupe being taken from the French in
 "1759." It was doubted, whether this island was
 "to be considered as a Plantation or Territory to
 "his Majesty belonging, or in his possession, with-
 "in the meaning of the Act of Navigation, and
 "other laws relating to duties on merchandise
 "imported from thence? But the law-officers of
 "the crown at that time gave their opinion, that

"it was; and they alleged such reasons for their
 "opinion, as are well deserving our consideration:
 "The Attorney General said, that, notwithstanding
 "the advantageous terms granted to the in-
 "habitants, they were disarmed, and in a state of
 "subjection to his Majesty's troops. All new
 "commissions were to be taken under his Maje-
 "sty, and all acts of justice were to run in his
 "name. He was in actual possession of all the
 "public revenues; and all the trade of the island
 "had changed its course, passing now in English
 "bottoms only to Great Britain. All this being
 "considered, he thought himself obliged to con-
 "clude, that this island was now a Plantation be-
 "longing to his Majesty, and in his possession, in
 "right of the crown of England; and that it
 "was an English and British Plantation, within
 "the meaning and intent of the Acts of Naviga-
 "tion. The great objection to this opinion arose
 "from the condition of the then inhabitants, who
 "enjoyed privileges under the articles of capitu-
 "lation, hardly compatible with the state of sub-
 "jects. But that objection, in his mind, had no
 "great weight, if it was considered, that these
 "were personal privileges, and were confined on-
 "ly to the present inhabitants, who were restrain-
 "ed from alienating to any but the King's sub-
 "jects; and the capitulation was made not with
 "the French King, but only with the inhabitants.
 "The right of sovereignty, therefore, was whol-
 "ly changed, and the whole island was the King's
 "acquisition by conquest. If any inhabitant
 "should die without heir, his lands would escheat
 "to the King; if any of them should by war, levy
 "or plot the King's death, they would be guilty of
 "high-treason; and, to illustrate this further, if
 "the

“ the inhabitants should agree to sell all their
 “ possessions to Englishmen, the island, without
 “ any further treaty or capitulation, would become
 “ wholly English. The inhabitants plainly un-
 “ derstood themselves transferred to his Maj-
 “ esty’s dominion, and therefore had stipulated for
 “ the like privileges in trade as were allowed to
 “ the rest of his Majesty’s subjects; and this was
 “ granted, with a proviso, that they complied with
 “ the acts of trade. In a word, the condition of
 “ subjects might be better or worse in different
 “ parts, but here the question was about the sove-
 “ reignty, and it had nothing to do with the privi-
 “ leges which his Majesty had been pleased to
 “ grant the natives.”

CHIEF JUSTICE. “ In that case, it seems to me,
 “ the question was, whether the island of Guada-
 “ loupe was an English Plantation belonging to
 “ the King.”

MR. EAST. “ Yes, my Lord; but this had refer-
 “ ence to a time, when war was still raging on the
 “ island, and no British subjects whatever were
 “ resident there.”

CHIEF JUSTICE. “ I have no recollection of
 “ any act passed to put Guadaloupe on the footing
 “ of an English Plantation, while it was in the
 “ possession of England, though probably there
 “ was; but I do recollect an Act of Parliament
 “ being passed for that purpose, with respect to
 “ the Danish island of St. Thomas, after it had
 “ fallen under the dominion of the crown. And,
 “ if I mistake not, it has been usual, on the trans-
 “ fer of any foreign island or colony to the
 “ crown, to pass an Act of Parliament for the
 “ same purpose.”

Mr. EAST next directed their Lordships' attention to the Act of the 37 Geo. 3, c. 117; where it would be found, that the words "British Plantations" and "British Possessions" were used indiscriminately; shewing clearly what the legislature thought, as to the meaning of the word Plantation. The preamble of this Act set out with reciting the provisions of the 1st Section of the Act of the 12 Car. 2; and in referring to those provisions, it introduced the word "Plantations," as well as the other terms therewith associated in that section of the Navigation Act. In the following enactments, it then went on applying these expressions generally to the British possessions in India.

CHIEF JUSTICE. "What was the particular object of that Act?"

Mr. EAST. "To regulate the foreign trade. The ships of countries in amity with his Majesty were by this Act permitted to trade with the British territories in India, under regulations to be framed by the Court of Directors, but which they never have framed." Mr. EAST's object was to connect the preamble with the body of the Act; and it would clearly appear, that all the several terms in question were treated as equivalent. Instead of repeating the whole of the words of the Navigation Act in detail, this Act went on in the sequel to speak of territories only, as the most concise expression and quite equivalent to all the others, and to Plantations among the rest.

Sir ANTHONY BULLER. "This Act speaks of the '*British possessions*' in India. Now, the term '*Possessions*' is equal not to '*Plantations*'

"tions" only, but to all the other terms, viz, "lands, islands, territories, &c."

CHIEF JUSTICE. "The Act is entitled, 'An act for regulating the trade to be carried on with the *British possessions* in India, by the ships of nations in amity with his Majesty."

Mr. EAST. "Yes; but in the body of the Act, the word 'territories' is used, as well as 'possessions.' They stand each alone in the different sections of the Act, and yet unquestionably contain the same meaning." And this, Mr. EAST contended, was not the least significant authority to shew, that the legislature were not always so nice in the selection of the terms in which their meaning was to be conveyed to the public, as they might be supposed at first sight to have been, by the introduction into the different sections of the Navigation Act, of the varieties of expression which had been already so much noticed.

Mr. EAST next came to another case of considerable importance in the present discussion, that of the American ship *Recovery*, reported in 6 Robinson, p. 344; in which, although the question whether British India was a Plantation, did not come immediately into debate, the general applicability of the Navigation Laws to all our acquisitions here up to that period (1807,) appeared to have been admitted. Sir Wm. Scott did certainly express his doubts on the subject; and considered these laws still to continue practically in a state quite undefined as to the British possessions in the East Indies; but he thought that, in point of principle, they should be applicable to those possessions. The passage was not

not altogether favorable to Mr. EAST's side of the question; but he should read it to their Lordships. "The illegality imputed," said Sir William Scott, "arises out of the system of our Navigation Laws, which seem to have continued in a very undefined state, with respect to our possessions in the East Indies. That system is to be referred generally to the celebrated Act of 12 Charles 2, and though some traces are to be found in the earlier stages of our history, yet that Act is usually considered as the basis of the system, as it now stands. The first section of that Act begins with a general prohibition to foreign ships, to trade to the British settlements in Asia, &c. I do not immediately recollect what were the possessions which this country held in that quarter of the globe at that time, but I should conceive that Bombay must have been the only English settlement, if indeed that was not acquired to the crown at a later period, as the dower of Queen Catherine. That fact is not very material, however, since the Act is not limited by such considerations, but applies prospectively to future acquisitions as well as to our more ancient possessions. I advert only to the state of our possessions at that time, as illustrative of the gradual increase, by which they have grown up to their present extent; and at no very distant period, from beginning, comparatively small. It is well known, that our establishments in that quarter of the world have stood on a very peculiar footing, which it has been perhaps the policy of this country not to define with great exactness.

"They

“ They may have assumed a different character
 “ at different times : and it may be very impor-
 “ tant in effect, and very proper in point of
 “ principle, that the general maxims of our Na-
 “ vigation system should be applied to them in
 “ their present state, although there might have
 “ been a great anomaly in practically applying
 “ them at a former period. It will not, however,
 “ be necessary for me to enter into a discus-
 “ sion of the policy of such a measure.” This
 last paragraph, therefore, continued Mr. EAST,
 seemed to point very materially indeed to the
 main question now at issue. It was here allow-
 ed by Sir William Scott, that it might now be
 very proper in point of principle, to apply the
 Navigation Laws to this country, though prac-
 tically relaxed with respect to it in former times ;
 —he only said, that he should not like to deter-
 mine the question of their applicability.

Sir FRANCIS MACNAGHTEN. “ The next
 “ passage shews pretty plainly, the idea which
 “ Sir William Scott himself had entertained as
 “ to these laws extending to this country.”

Mr. EAST proceeded to read as follows ; viz.
 “ With regard to the fact, I had always en-
 “ tertained the notion that they had not
 “ hitherto been so applied; but a case oc-
 “ curred not many years since, which brought
 “ the consideration of the question in a distinct
 “ form before the Courts of common law.
 “ After repeated arguments and much deliber-
 “ ation, the Court of King’s Bench expressed an
 “ opinion, that the Navigation laws did extend
 “ to those countries, and on a writ of error the
 “ judgment of the King’s Bench in that case
 “ was

“ was affirmed, with a complete adoption of the doctrine laid down.” The case here referred to, was that of *Wilson v. Marryat*, 8 Term Reports, p. 31.

ADVOCATE GENERAL. “ There is not one word in that case, about the Navigation law applying to India. The whole is a mistake of the reporter.”

Mr. EAST proceeded. He had read this judgment of Sir W. Scott's; to shew the notion which that learned Judge entertained, as to the propriety of applying the Navigation system of England to this country; although Sir William said, he was not aware of the fact of its having been actually applied.

The next case to which he should advert, was that of *Chalmers v. Bell*, 3 Bosanquet and Puller, p. 604. This was an action on a policy of insurance on goods, laden by the Swedish ship *Resolution*, at Madras for Gottenburgh; and the question was, whether or not this was a legal voyage? In this case, it was taken for granted, (that is, by the admission of Counsel on both sides,) that the British territories in Asia are Plantations or Colonies, within the meaning of the Navigation laws; and the Court held, that those laws had not been repealed, with regard to the territories in question, by the Act of the 33 Geo. 3d. Lord Alvanley said; “ Taking it for granted, that the East Indies are to be considered as British Colonies within the meaning of the Navigation laws, it does not appear to me, that the clauses which have been cited from the 33 Geo. 3. go the length of repealing the restriction of those laws with respect to
“ the

" the East Indies. It is true, that the rigour
 " of those laws had been considerably relaxed
 " in practice with respect to the East Indies,
 " previous to the 37 Geo. 3; but the laws still
 " remained in force. The doctrine of destitu-
 " tion has no existence in the law of England,
 " though it has in that of Scotland. It is urged,
 " that the clauses of the 33 Geo. 3. are inconsis-
 " tent with the provisions of the Navigation
 " Acts; for it said, that the legislature, by em-
 " powering foreigners to trade to and from In-
 " dia, have authorized them to carry on their
 " trade in their own ships. But the legislature,
 " by empowering foreigners to buy and sell
 " within the limits of the East India Company's
 " Charter, without being subject to penalties,
 " are not to be considered as having repealed any
 " part of those laws which were made for the en-
 " couragement of British navigation. The right
 " to buy and sell may be given to foreigners, and
 " yet the obligation to export in British ships
 " may remain. We will look into the clauses,
 " but unless we should have occasion to alter
 " our opinion, we think that a nonsuit must be
 " entered.—On this day, Lord Avenley said,
 " that the Court had looked into the Acts of
 " Parliament, and were of opinion, that the Na-
 " vigation laws were not repealed with respect
 " to the East Indies by the clauses in the 33
 " Geo. 3." Here, Mr. EAST continued, it was cer-
 " tainly true, that the question at issue only re-
 " ferred to those clauses of the Act of the 12 Car.
 " 2, which regarded the shipping in which our
 " colonial trade was directed to be carried on; but,
 " if this was supposed to be good law with refer-
 " ence to those clauses, he saw no reason, why it
 " F should

should not be equally good, with reference to the 18th and 19th Sections of that statute. Lord Alvanley said, he took it for granted, that the East Indies are to be considered as British Colonies within the meaning of the Navigation laws; and this he did, after an argument on both sides of some length, in the course of which this point had not been questioned. It was to be inferred therefore, that in his opinion not a doubt existed, but that this country was a colony or Plantation. If that term then was to controul a case coming under the provisions of the 1st Section of the Act, why should it not equally controul one which came under the latter sections? He did not certainly speak with reference to the trade of foreigners, from whom it would be absurd to require such a bond; but he spoke as to the trade carried on here in British ships,—a phrase, which taken in a qualified sense, would be understood to include the ships of British colonies. The law was considered to hold, in as far as concerned the ships themselves; how then was it to be contended, that it did not apply to the British trade carried on in those ships? Both branches of the law were municipal regulations; both were of great importance in themselves; and both looked towards the general objects and spirit of our Navigation system.

CHIEF JUSTICE. “ It may be true, that, in
 “ both cases, the object is equally desirable;
 “ and yet both objects may not be equally attain-
 “ able. All these cases apply to the trade car-
 “ ried on between foreign nations situated with-
 “ out the Company’s limits and British India,
 “ before the restrictions of the law with respect
 “ to

“ to such foreign trade were done away. But,
 “ from the time that we relaxed our system
 “ in favor of foreigners, the objects contem-
 “ plated in these sections of the Navigation
 “ Act ceased to be practicable; and then the
 “ policy lay the other way. In the ships of any
 “ other country may come here freely, and take
 “ away the enumerated commodities to their
 “ own ports, the system of carrying all the pro-
 “ duce of the country to the ports of England,
 “ is no longer attainable. The next object
 “ then would be, to promote as much as possi-
 “ ble, its being brought away by British ships
 “ in any manner, foreigners being already per-
 “ mitted to carry it to their own ports in their
 “ own ships.”

With respect to the policy, Mr. EAST contin-
 ued, of the late relaxation of our Navigation
 Laws in regard to foreigners, it was not for
 him to pronounce. The legislature certainly
 had made an Act, permitting foreigners to trade
 from foreign ports and in foreign ships, with
 these possessions of the crown, as if these pos-
 sessions were a distinct and independant coun-
 try, in complete infraction of the great principles
 of our Navigation system. But the question
 now came to be, were we therefore to break up
 that system altogether; and were English tra-
 ders, instead of being restricted to carry the pro-
 ducts of this country to a British port, were they
 to be at liberty to carry them any where else at
 their pleasure? This would be going a step fur-
 ther, than the legislature had yet done. True
 indeed it was, that many infractions of the ori-
 ginal Act of Navigation had been allowed, in
 favor of the trade of this country. As to mari-

hers, for instance ; it had been permitted by a very late Act, to navigate our ships, in the traffick between port and port within the limits, with Asiatic sailors. But it did not of course for that reason follow, that the law was in every respect to be contravened or rooted up. Here was a obligation, which he did not see any where repealed ; and because some other parts of the law had been repealed, we were not therefore to presume that this must be so also. Pity he thought it was, that we should ever have relaxed it at all, that we should ever have permitted foreigners to come to this country, and carry away its productions, as if it were no longer a colony of the King of England. He thought this a very great and dangerous infringement of our Navigation system. It went to break off that dependence of the colonies upon the mother country, which ought at all times to subsist, and which it was particularly important for her interests and safety to maintain. The sovereignty of the crown of England over this country, was now determined beyond a doubt ; and strange it was to imagine, that it ever should have been called in question, or that it should have been supposed for a moment, that any Englishman could shake off his allegiance. This question however, if ever there was any such, had been set to rest by an express legislative declaration in the Act of the 53d of the King.

CHIEF JUSTICE. " Similar expressions with respect to the King's right of sovereignty, are to be found in some of the earlier statutes, such as that of William and Mary ; but they seem to have been dropped in some of the intervening Acts." The

The free resort of foreigners to India however, continued Mr. EAST, which the law now permitted, went to sever the bonds of allegiance, and might lead eventually to our setting up an independant country. This policy was to be over at once to defeat a primary object of our Navigation system, as set forth in one of those very Acts of Parliament, viz. that of "keeping the colony trade to our lives;" thus to come to destroy that close and intimate connexion between the colonies and the mother country, which was so desirable, and which certainly did still exist in full force between Great Britain and her West India colonies, though occasionally relaxed according to circumstances even with respect to those colonies, particularly in as far as concerned their intercourse with the continent of America. It was however fully settled, that, except under the exigency of special circumstances, when temporary measures had been adopted in mitigation of the general system of restriction laid down for the colonial trade, the people of the West Indies are constrained to trade with the mother country only. Why then was not the same rule to apply to the East? Why was any boon to be extended to this country, and not to the West Indies? To the West Indies, (if to any part of her dominions more than to another,) Great Britain principally owed her present naval and commercial pre-eminence. Those possessions were the great nursery of her seamen, and the centre of her commerce. Mr. EAST only prayed therefore, as to this country, that there might be no further infringement of these Navigation Acts, which in regard to foreigners had been already so much relaxed. The two

Sections of the Act of the 12 Car. 2. more immediately in question, were intended for the benefit either of the colonies or of the mother country, or of both, not certainly for the benefit of strangers to her exclusion;—those clauses were enacted, as he had before said, with a view to the protection of the revenues of Great Britain.

Some objection, Mr. EAST continued, might perhaps be raised to the word “Governor,” which occurred in the 19th Clause of the Act of the 12 Car. 2; it might be contended, that this term cannot apply to India, because, at the time when that Act was passed, we had no territories here, and therefore could have no Governor, and because there never has since that time been any King’s Governor in this country, to whom bond could be given in the terms of the Act. In reply to this, he should argue, that there was no such qualification of the word “Governor,” in the clause in question.

CHIEF JUSTICE. “That appears to belong to the question of forfeiture or no forfeiture. Is it meant to be argued, that a law creating a forfeiture cannot apply, unless it can be shewn, that provision has been made by the legislature, for enabling the subject to comply with what is required of him?”

ADVOCATE GENERAL. “No, my Lord, I mean to argue this question on the broad ground, that these provisions of the Navigation Act do not apply to this country; and I hope to prove it, from the whole constitution of the Indian empire.”

Mr. EAST. “The point is distinctly put, in the Answer. They deny the whole of the law.”

CHIEF

CHIEF JUSTICE "The argument which you are now combating is, that however the case might stand *de jure*, *de facto* there were no physical means of complying with the requisites of the Act, and therefore its penalties do not apply."

ADVOCATE GENERAL. "And therefore, my Lord, that law does not apply to this country. The Governor General of India has no authority whatever to receive such a bond; there are no powers vested in him, but what are to be found in the statute books, all which are on your Lordships' table."

The point, said Mr. EAST, was a very simple one. The Act did not say "a King's Governor." The term was simply "Governor," which, according to his understanding of it, signified the principal person or chief of the settlement, holding command and exercising authority as a Governor within it. The Governor General of India was the King's subject, and the chief British subject resident in, and holding command and exercising the authority of a Governor within this country.

That, Mr. EAST conceived, was quite sufficient to constitute a Governor for the purposes of this statute. What were the East India Company, but the subjects of His Majesty? The Company therefore could not set up this as no King's country. The country was held by the Company for the King under their Charter, and by the Governor for the Company. He was Governor under those who were Governors for the King; and therefore by inference, though not immediately, he was Governor for the King. But

But, as he had said, there was in fact no such word as "King's Governor" in the Act. The term was simply "the Governor,"—the principal person of any English Plantation. If this country then were an English Plantation, the Governor General was a Governor within the meaning of this clause. He therefore was to take these bonds, if any were to be given, in the one case intended by the Act; and in the other case, by and to *him*, were the certificates set forth in the Act, to be given and produced.

But here again it might be said, that this never could have been contemplated, because no officer in this country coming under the denomination of a Governor, had ever taken the oaths, prescribed by the other Acts of Navigation to be administered to all Governors of Plantations.

CHIEF JUSTICE. "I do not know, how we are to presume that. It is a matter of fact, which it will be for the Defendants to bring in evidence."

ADVOCATE GENERAL. "I should be sorry indeed, my Lords, to rest this case on so narrow a ground. We have not therefore put in any plea in bar, which would have excluded a discussion on the general merits of the question; though, no doubt, I shall avail myself of this and of every other ground of objection on behalf of my clients; as in the case appealed from Madras, in which the judgment was reversed, on the express ground that there were no proper officers in this country to carry the Register Act into effect. I should be sorry, however, to restrict the question before

"fore your Lordships this day, within such limits. I mean, as I have said, to take a much broader ground, and to shew that the laws in question do not apply, nor ever did or could apply to this country."

CHIEF JUSTICE. "Do these Acts of Parliament respecting British India, prescribe any specific form of oath to be administered to the Governors of this country?"

ADVOCATE GENERAL. "I believe not, my Lord; I find none such."

MR. EAST. "Yes, my Lord; there is a form of oath."

ADVOCATE GENERAL. "Not one for Governors General. For Governors of Plantations, there is an oath prescribed in the Act of the 7 and 8 Gul. 3. c. 22, sec. 4."

Mr. EAST then proceeded to read the clause in question; whereby all Governors and Commanders in Chief of any English Colonies or Plantations, are required, under certain penalties, before their entrance into their government, to take a solemn oath to do their utmost, that all clauses, matters and things contained in the Act of the 12 Car. 2. c. 18, and other before recited Acts of Parliament theretofore passed, and then in force relating to the said Colonies and Plantations, and all and every the clauses contained in the said Act of the 7 and 8 Gul. 3, be punctually and bona fide observed. This, he said, was the form of oath; and whether or not it ever had been actually applied, in the case of the Governors of this country, he had endeavoured to shew, that it ought so to have been.

CHIEF JUSTICE. "I should like to know, whether, in point of fact, the Governor General of India ever did take an oath of this description."

ADVOCATE GENERAL. "No, my Lord; from the year 1661 down to this time, no such oath has ever been taken by any Governor in India."

Mr. EAST admitted, that no person holding the earlier office of Governor, or the later one of Governor General, had, as far as he had been able to inform himself, ever taken any oath, upon entering on his appointment, to observe the provisions of the Act of the 12 Car. 2. But it did not follow, that it was not incumbent on him to have done so. It might have been a *casus omissus*,—some negligence, for which he was not able to account. But he contended, that the Governor General is bound to take this oath, because he is a Governor of this plantation, because he is a Governor, as he had shewn, under the King of England. And if he be bound so to do, it did not signify, that the oath had never been taken by him. He was still bound by its obligations, and was to see every single clause of this Act of the 12 Car. 2. duly carried into effect. **Mr. EAST** was also prepared to admit, that it never had been the custom in this country, to take these bonds, or to grant these certificates, in the terms of the 19th Section of the Navigation Act. But here, the same ground of objection occurred again, viz. that this omission was no proof that such bonds and certificates were not required by the law. In both cases, a bill of indemnity would be necessary, to protect the parties from the penalties which they must have incurred,

Mr. EAST now coming to the last division of his subject, observed, that it might be contended, that, even supposing India to be an English plantation within the words of the Act, and the Governor of India a Governor within the meaning of that word, also obliged to take this oath, and that these goods are of the growth and production of this English plantation, admitting all this, it might be contended, that the operation of the Act of the 12 Car. 2. and of our whole Navigation system, is controuled by Acts of Parliament subsequently passed relating to the affairs of the East India Company, and for the regulation specifically of the trade of India. To this he should reply, that an Act of Parliament can only be repealed in terms, and that it could not be said, that the Act of the 12 Car. 2. had ever been so repealed. No subsequent Act of Parliament went to repeal the whole of that statute; although it was true, that there were laws, which went to qualify it, and even to except this country altogether from some of its provisions. As an authority on this head, he should refer their Lordships to the case of the Ship Mary, 1 Dodson's Admiralty Reports, p. 75; in which Sir Wm. Scott held, that the carrying of Europe goods from one West India island to another, in contravention of the Act of the 15 Car. 2, was illegal, notwithstanding the existence of an erroneous usage to the contrary. The prevalence "of such a practice," Sir Wm. Scott said, "could not be permitted to weigh against the positive injunction of the statute, which must be held imperative, unless it had been modified by subsequent Acts of Parliament." No law therefore was to be got rid of in this manner, as it were by a side-wind; it must be repealed,

There were however, as Mr. EAST had said, several statutes, which went to modify the Navigation laws, in their application to India; but the Acts, on which the principal reliance of the Counsel for the Defendant would no doubt be placed, were those immediately relating to the East India Company. One of these was the Act of the 9 and 10. Gul. 3 c. 44; which, in consideration of a certain sum of money to be advanced to the King, held out promises of a charter to a new Company, giving them the exclusive trade to the East Indies in very large terms. Here Mr. EAST proceeded to read the 61st Section of that Act, specifying the proposed grant. Then followed a provision in Section 69, requiring securities of a peculiar description, to be given by the said Company, that they should cause all goods laden by them in any ship bound from the East Indies or other parts within the limits, to be brought (without breaking bulk) to some port of England or Wales. Therefore, continued Mr. EAST, his learned friends would probably say, that the Act of the 12 Car. 2. never could have been intended to apply to this country; for here were securities of a much higher description, requiring all goods whatever to be brought by the Company to an English port, without breaking bulk. He admitted, that something might certainly be said on this score. But then he contended, that this provision, far from being in contravention of the provisions of the Act of the 12 Car. 2, seemed to be rather in accordance with and in furtherance of them. This in fact was one of those very provisions, though it went perhaps a little further. This enactment did not go to repeal the statute of Navigation, though it

it might be difficult to find out the necessity which had suggested it, while the penalties of the latter Act were still in force. It might however be thought expedient, to exact these further securities from those, who, for the first time in a body, were to have the sole liberty of trading to, from, and in the East Indies, and all places within the Company's limits, and who might therefore have easily enjoyed opportunities of contravening the provisions of this law. The same term, "freely trading," occurred again in the 81st Section of the Act; and the question was, whether this expression was equivalent to a repeal of this great statute of the 12 Car. 2. That could hardly be pretended, although the phrase might perhaps be superabundant. "Freely trading" did not necessarily mean "trading as they pleased;" it clearly signified, "*using trade freely according to law.*"

CHIEF JUSTICE. "The terms of the Act go, "without any expressed limitation, to grant a free "trade to, from and between all islands, ports, "havens, cities, creeks, towns and places of Asia, "Africa and America, or any of them, beyond "the Cape of Good Hope, to the straits of "Magellan."

Then, Mr. EAST continued, came the Act of the 37. Geo. 3. c. 117 to which he had already referred, permitting a foreign trade between the British possessions in India and countries in amity with Great Britain, and giving the Court of Directors power to frame regulations respecting the same. But here was this most material circumstance; that the preamble of this Statute recited that part of the Act of the 12 Car. 2, which exclud-
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ed foreigners ; and then went on to say, " this " shall be done, notwithstanding any thing in that " Act contained." The inference therefore clearly was, that the Act of the 12 Car. 2. did extend to this country ; and that the legislature judged it necessary, to rescind now for the first time so much of that Act, as might prove any obstacle to the carrying these proposed regulations regarding the foreign trade into effect.

In the Act of the 41 Geo. 3. c. 37, was to be found another temporary infringement of the same sort on the Navigation Act, an infringement for the purpose of permitting the carrying of Rice in India-built ships from this country to England. Here again, reference was had to the Act of the 12. Car. 2, as applicable to India in the matters depending on this statute ; and it was enacted, that such importation should be lawful, *notwithstanding any thing in that Act contained.*

In the Act of the 53 Geo. 3. c. 155, again, the 6th Section, in throwing open the trade of India to His Majesty's subjects generally, directed, that such trade should be carried on only " in ships navigated according to law." Here again was a direct reference to the Act of the 12 Car. 2, in so far as concerned the article of shipping at least, though no immediate mention was made of the section requiring bonds to be given for the delivery of their cargoes at a British port. There was also in the 7th Section of the same Act, the 53d of the King, a further recognition of the same principle. That section went to permit the importation into the United Kingdom, of goods from any place within the Company's limits, although such goods might not be of the growth of that particular place, *notwithstanding*

notwithstanding the enactment to the contrary in the Act of the 12 Car. 2.

Again, the Act of the 54 Geo. 3. c. 34, was not less decisive on this head. The 6th Section of the 53d of the King, had opened to individuals the trade between India and Great Britain only; to which this Act added the privilege of trading at the intermediate ports in the course of their voyage, and also between all ports and places within the limits of the Company's charter, except the dominions of the Emperor of China; but then this was to be done only, *in ships navigated according to law*. All these statutes therefore served to shew, that since the first commencement of the Company's exclusive trade, a strict observance of the Navigation law has been considered necessary in carrying it on.

CHIEF JUSTICE. "What are the terms of that passage of the 54 of the King, which excludes China?"

ADVOCATE GENERAL. "I shall have occasion my Lord, to refer to the whole section. The whole is most material to the present question; and it is a very long section."

Mr. EAST here read the passage alluded to by the CHIEF JUSTICE. "That, he observed, was one of the clauses, on which his learned friends on the other side might no doubt be disposed to rely. In all these Acts however, relating to this country, as well those which had originally vested the exclusive privilege of trade in the East India Company, as those subsequently passed, the words "navigated according to law" were uniformly used; and to these words he could give no other interpretation, than that this trade should be conducted

ducted according to the laws of Navigation. One part of those laws was, that, previous to the shipment of certain goods of the growth of an English plantation, bond should be given, or a certificate produced, shewing that bond had been given elsewhere, to carry those goods to some British port. This restriction subsisted to the present time; for it was not repealed by the Circuitous Trade Act, which made no mention of it, and could be construed therefore to apply only to the trade in such goods as might be legally carried to the several places embraced in its provisions. The object of the restriction, was to draw the subsisting connexion between the colonies and the mother country closer, and also to increase the revenue of customs which the King was entitled to derive from that colonial trade. And, if the Act of the 12 Car. 2, should be eventually construed, as he had no doubt it must be, to apply to this country, it would at all events, certainly go to cut off one very considerable branch of traffick, which was now carried on in British ships, between the settlements of Calcutta, Madras and Bombay, and the ports of China and the Arabian sea. The trade of China, as their Lordships had seen, was expressly excluded; and that to the Arabian ports must now be taken as without the limits of the Company's charter, inasmuch as it was without the stipulations of those Sections of the 53d and 54th of the King, which restricted the licenses to be given by the Company to private traders, to the trade with ports situated between the river Indus and the town of Malacca. Even, then, if this Circuitous Trade Act did go further to cut up the principles of our Navigation system, the only result would be, that an intermediate trade in British ships

ships to places within those limits, would still continue open, and that to be carried on strictly under Plantation bonds. All other commerce between this and the neighbouring countries, could be carried on in foreign ships only. And, melancholy as the consequences of such a state of things would be to the mercantile interests of India, yet, if such be the law, their Lordships were bound to carry it into effect, and must pronounce the condemnation of the vessel and cargo now before them.

Mr. MACNAGHTEN then followed Mr. EAST, on the part of the prosecution. He could not, he said, but feel as strongly as his learned friend had done, the arduous nature of the task imposed upon him, and the difficulty which must necessarily attend an attempt to prove, that laws which have been so long out of use, as those on which the question this day before their Lordships must necessarily turn, should be now almost for the first time enforced. It could not, he said, be denied, but that, as far as concerned the trade of India, the laws in question had been allowed to remain from the time of their enactment, almost as a dead letter on the statute book. If again, the question this day for consideration merely concerned the policy of applying those laws now for the first time to the commerce of this country, it was certainly possible, that there might be circumstances in the state of things at the present time, which would induce their Lordships to say, that they ought not to be so applied. It might, for aught he knew, be consistent with expediency and with the principles of sound policy, that these laws should now be abolished altogether. But these were not at all the questions for the decision

of their Lordships in this case. Nor would it be necessary for Mr. MACNAGHTEN's purpose, to trace back the history of our Navigation laws to their origin, or to enquire, whether and to what extent they have at any time been actually applied to the trade of India, nor whether the time had now arrived when they ought to expire. It was sufficient for us to know, that these are the fundamental laws of the maritime system of England, and that under that system our country has attained its present greatness. The mere question or the decision of their Lordships, as concerned the case now before them, was whether these laws were applicable to India in the first instance, and, if so, whether or not they have been repealed in regard to India, by any subsequent statutes. And if their Lordships should be of opinion, as, after the argument of his learned friend, he had no doubt they would be; first, that the territories which we now possess in India, were originally included within the meaning and operation of the provisions of the Act of Navigation; and secondly, that those provisions have not since been repealed, however repugnant the result might be to their feelings, this vessel the Dispatch must, he apprehended, be condemned.

With respect then to the first question in debate, namely, whether these laws originally applied to this country, it were preposterous to argue, that the provisions of the Act of the 12 Car. 2, c. 18. were restricted to the actual possessions of England at that time, and were not intended to embrace any future acquisitions, and therefore that those provisions cannot be construed to apply to this country, inasmuch as we had no posses-
sions

sions here at the period of their enactment. The terms of the Act were clearly prospective. The restrictions contained in the 1st section, as to the build and manning of ships employed in the colonial trade, were declared to extend not only to all lands, islands, plantations, and territories then belonging, but to all "which might thereafter" belong unto, or be in the possession of His Majesty, his heirs and successors." Therefore the settlement of Bombay, or any other place in the East Indies, which after the passing of this Act had become a British possession, was here expressly included. It was, however, under the provisions of another section (the 19th) of the Navigation Act, that he claimed the condemnation of this vessel now before the Court. And that section, Mr. MAUGHAM contended, was explained and confirmed, and a prospective sense given to it, by the Act of the 22 and 23 Car. 2, c. 26, which was passed twelve years after Bombay had been transferred to England from the crown of Portugal. Even indeed the Act of the 15 Car. 2, c. 7, was posterior in point of date to the cession of Bombay. And it was rather a curious circumstance, that in that statute, and again more particularly in the 14th Section of the Act of the 22 and 23 Car. 2, c. 26, Tangier was specifically declared not to be a Plantation within the meaning of these laws of Navigation. Now, it so happened, that Tangier and Bombay both came to the possession of the crown of England, at the same time and in the same manner; both formed a part of the same marriage settlement, which Charles obtained with the Princess of Portugal. Had it been intended therefore to exclude Bombay from the operation of these laws, it seemed altogether extraordinary,

that this exception should have been made in favour of Tangier, and no notice taken of Bombay whatsoever. On the maxim therefore, “*expressio unius exclusio alterius*,” it followed, that Bombay must be within the operation of the Act.

But if the Acts of Parliament should not after all appear sufficiently clear on this head to their Lordships, they would next look to the different decisions of the Courts, to elucidate those Acts; all which decisions, he said, went clearly to establish the principle, that these our Indian possessions are Plantations within the meaning of the Navigation laws. On this head, he had been already in a great measure anticipated by his learned friend, and it would be unnecessary for him to go over the same ground a second time; but there were still left him one or two cases to observe upon, which clearly went to establish the applicability of the Navigation laws to this country, and to the case of the ship and cargo now before the Court.—One was the case of *Morck v. Abel*, 3. *Bosanquet and Puller*, p. 35. This was an action on a policy of insurance on goods shipped at Calcutta on a Danish ship, the *Juliana Maria*, bound to Copenhagen. The ship was captured by the French on her homeward voyage, and condemned as prize. And this voyage having been commenced before the passing of the Act of the 37 Geo. 3, c. 117, permitting foreigners to trade to India, the underwriters resisted payment of the policy, and refused also to return the premium, on the ground of its being illegal, under the provisions of the 12 Car. 2. c. 18. s. 1, to export goods from Calcutta in any ship not belonging to a British subject. So clear was the application

application of the law considered to be in this case, that the Counsel for the Plaintiff did not think it necessary to argue it at all, but allowed a verdict to be found against them, contenting themselves with insisting, that the premium should be returned, on the plea that the shipper, being a foreigner, might be presumed ignorant of the law. The Court, however, refused on this ground to set aside the verdict, and allow a nonsuit to be entered. And Lord Alvanley, in giving his decision, observed ; " Unfortunately this policy " was effected previous to the passing of the 37. " Geo. 3, and though I believe that before the pas- " sing of that statute, the provisions of the Navi- " gation laws had been relaxed in practice with " respect to foreigners, still in a Court of Law " the Plaintiffs are not entitled to recover, if the " trading in question contravened the regulations " of that Act." Mr Justice Chambre afterwards added ; " I think that we ought not to relax the ri- " gour of our great political regulations in favor " of foreigners offending against them, and that " there is very little reason to presume ignorance " of a law peculiarly applicable to the subjects of " foreign states." The subsequent case in the same volume, that of *Chalmers v. Bell*, had been already cited. It was a case of the same nature, and went still more strongly than the other to shew the opinions entertained by the Courts in England, as to the applicability of the Navigation laws to this country. It was here again taken for granted, that originally they did so apply ; and it was further, after an argument, admitted, that they had not been repealed, in as far as they referred to India, by any subsequent statute.

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He considered it therefore on the whole to be clear, that the principles of the Navigation laws were by these decisions established as applying to this country.

CHIEF JUSTICE. "All these questions, to which you have now alluded, arose, I believe, on that part of the Navigation laws, which requires the trade to and from the foreign possessions of England, to be carried on in English ships. None of them appear to have arisen on that clause, which respects the exportation of goods, and which is the clause principally in view at present."

MR. MACNAGHTEN. "No, my Lord; these decisions certainly do not immediately proceed upon the 18th or 19th Sections of the Navigation Act; but then we say, that those two clauses follow the principles of the 1st Section." In support of this view of the subject, Mr. MACNAGHTEN then proceeded to read the following passage from Mr. Reeves's Treatise on the Law of Shipping, p. 322, one part of which had immediate reference to the two cases in question; viz. "Following the division of the subject, which was suggested by the Act of Navigation, the trade to the East Indies, which was then, and for many years after, a trade to a foreign country, like the Company's present trade to China, was placed in this part of our inquiry. But the condition of the Company has since considerably altered. From the possession of settlements and factories, they grew to have territorial possessions; and whatever scruples and unwillingness there might once have been to consider such territories as possessions to his Ma-
" jesty

" jesty belonging, within the meaning of the Na-
 " vigation laws, it at length came to be an
 " admitted point. Accordingly, we find in Stat.
 " 37. Geo. 3. where the Americans are al-
 " lowed a trade to the British territories in In-
 " dia, the grant is made with a *non- obstante* of
 " the Act of Navigation, Stat. 12. Car. 2.
 " Two cases had come before the Courts, in which
 " this principle was admitted; the one was that of a
 " Danish ship, which had laden goods at Calcutta;
 " the other of a Swedish ship, which had taken a
 " cargo at Madras. Both these were objected to as
 " illegal voyages, and consequently, the insurances
 " that were made upon them were not binding.
 " It was endeavoured to defend the first of these
 " irregular trades by alleging, that it was the prac-
 " tice to make such shipments in foreign ships,
 " and that four months after the one in question,
 " there was passed an Act, Stat. 37. Geo. 3. c.
 " 117, allowing such exportation in foreign ships
 " to be made. The second was attempted to be
 " supported by a surmise, that the prohibition of
 " the Navigation laws, with respect to foreigners
 " trading to the East Indies, was removed by the
 " construction of Stat. 33. Geo. 3. c. 52. s. 138,
 " 139, and 146. But, in both cases, the Court
 " were clearly of opinion, that the Navigation
 " laws extend to the British ports in the East In-
 " dies." Mr. Reeves then went on to detail fur-
 " ther decisions and law opinions bearing either im-
 " mediately or collaterally on the point in question.
 " And from one of the latter given by Lord Eldon
 " when Attorney General, it was clear that the In-
 " dian possessions of Great Britain were considered
 " by that great authority, as within the meaning ge-
 " nerally of the Navigation Act.

Now,

Now, it might be said however, continued Mr. MACNAGHTEN, that, although these possessions might be territories within the meaning of that statute, yet that they were not Plantations within the meaning of its 18th and 19th Sections. But that point, he apprehended, must be considered as settled by the case of the island of Newfoundland, to which his learned friend had already referred. The Board of Trade, it appeared, had held that island to be a colony and plantation, and had accordingly appointed a Custom-master to receive the duties there, which the law imposed on goods imported into the colonies and plantations in America. Yet it appeared, that the same policy which prevailed here, in regard to the preventing colonization, prevailed also at Newfoundland. He contended therefore, that the two possessions were in this respect exactly on the same footing, and that, if the one was a colony and plantation, so was the other also. Newfoundland had been decided to be a Plantation, and by the same rule, so must be the British possessions in India.

There still remained, however, another question and one of more difficult solution, namely, whether these statutes, admitting them to have been originally applicable, have not been by subsequent acts of the legislature repealed, in as far as they concern this country. And here it must be admitted, that the principles of the Navigation laws, in their application to India, have been greatly modified by subsequent enactments, and have undergone indeed so many and such important infractions, as have left very little of their original character remaining. The first of these infractions was to be found in the Act of Union with Scotland, Stat. 5, Ann, c. 8; by the 4th and 5th articles of which, the
privileges

privileges, which by the Navigation Act had been reserved for English ships only, were extended to the ships of Scotland, and Scotland would have enjoyed the trade to the East Indies, had it not been in violation of the privileges of a chartered company. Ever since that time, the legislature had been gradually removing the obstacles which that statute opposed to trade. The enactments of the 37 of the King, c. 117, admitted foreigners to participate in the trade of this country, from which by the Act of the 12 Car. 2. they had been entirely shut out. Now Mr. MACNAGHTEN contended, that this Act of the 37 Geo. 3, instead of shewing that the Act of the 12 Car. 2. never had applied to India, seemed expressly to set it up, as concerned this country, in every provision which it did not explicitly repeal ; for, if the legislature did not consider that statute (the 12 Car. 2.) as extending to India, why should they have thought it necessary, to recite its provisions in this Act of the 37 of the King, and to rescind so much of them as would have been an obstacle to the intended admission of foreign ships to the trade of India ?

Then there was the Act of the 33d of the King, c. 52, which contained a variety of detailed provisions relative to the exclusive trade of the East India Company, and which repealed many other statutes, but left that of the 12 Car. 2. untouched. The last statute for continuing the exclusive privileges of the Company, under certain modifications, the 53 Geo. 3. c. 155, expressly noticed the Act of the 12 Car. 2 ; and so far from considering its provisions repealed with reference to this country, it recited in the 7th Section one of those provisions, requiring all importations of foreign
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goods

goods to be made directly from the countries of their growth, and confirmed and extended the exception therewith connected, in favor of goods to be imported from places within the Company's limits. The terms of the Act of the 54. Geo. 3. c. 34, (commonly called the Circuitous Trade Act,) supported the same argument, as had been already shewn by his learned friend. And lastly, there was the East India Ships' Register Act, passed in the 55th of the King, c. 118, and which, he believed, was the very last act of the legislature which applied to this country. This statute also seemed to set up the Act of the 12 Car. 2. and the other laws of Navigation, as applicable to this country, in as much as its provisions went to enable India-built ships to, navigate within the Company's limits, without registers, and manned with Asiatic sailors, notwithstanding the enactments in question.

All these latter statutes relating to India, cited the Act of the 12 Car. 2. and did so without repealing the two last clauses of that Act, under which this vessel had* been libelled. They also went to establish clearly one important point, which indeed could scarcely ever have been doubted; namely, that these countries are territories belonging to the King; the Act of the 53 Geo. 3. containing an express declaration to that purport.

The effect therefore of these Acts of Parliament had been merely this, that, in regard to ships frequenting the British possessions in the East Indies, they rendered a compliance unnecessary with those rules of the Navigation code, which concerned the build, manning, and registry of ships.

ships. The provisions of the Act of the 12 Car. 2. had in truth by these Acts been nearly all taken away, except this with respect to vessels giving bond previously to the shipment of certain commodities of the growth of an English Plantation; and this, Mr. MACNAGHTEN hoped, he might now fairly say, remained altogether untouched. It could never be pretended, that this provision had been overlooked by Parliament. They had seen the successive changes, which were taking place in the situation and circumstances of these countries, and had the legislature perceived the necessity of doing away the restrictions in question, as they concerned the trade of India, they would no doubt have made a specific enactment to that end. They had not done so; and the obvious inference was, that they had seen no necessity for any such repeal. On the question of usage, one case had been already laid before their Lordships from Dodson's Reports, in which the judge had found himself most reluctantly compelled to affirm the condemnation of a ship and cargo, for trading, in contravention of the Navigation laws, between one West India island and another, although the particular trade in question had been always before understood to be legal. And, on the same principle, however unpleasant the task, and however prejudicial even they might consider it to be to the interests of the public, yet, if their Lordships should think, that the clause of the Act of Navigation, under which the Dispatch was libelled, had not been repealed, they were bound to enforce the law, by decreeing the condemnation of that vessel and her cargo.

The ADVOCATE GENERAL was then heard for the Impugnant. He was now to address their

Lordships, he said, on behalf of the master and of the owners of this vessel the *Dispatch* and her cargo, and was to argue against the legality of their seizure. He agreed with his learned friends on the other side, that no question of deeper importance had ever come under the cognizance of that Court. The consequences which had already flowed from the decision which had taken place elsewhere, were manifest to all, and he hoped that the agitation and alarm, which that decision had spread through the mercantile community of India, would that day be set at rest. It was his intention to treat the question on the broadest grounds, not to rest it on the argument (though that was perhaps sufficient in itself to decide the question) that there were not the officers here to take these bonds, or to carry the clauses of the Act contended for into effect, and that the parties had not therefore the means of complying with the law; but he meant to contend broadly, that these provisions of the Navigation Act, for a supposed breach of which this vessel had been libelled, did not extend, or at all apply to the trade carried on with any part of the possessions of the Company, or any place within the limits of its charter.

Under this view of the subject, it would be his duty to go further back than his learned friends had done, to a time anterior to that of the passing of any of the Acts of Parliament which had been referred to on the other side. He would go back to a time, nearly an hundred years prior to the passing of any Act of Parliament professing to regulate the commerce of this country. He would go back to the first charter which was granted by Queen Elizabeth in the year 1601, from which
period

period down to the passing of the last Acts of Parliament respecting India, it would be found, that this was not a trade carried on according to the principles of any other trade, or to which the rules of any other trade could be applied. The trade of India, until the passing of the late Acts of Parliament, had never been a trade, in any degree, open to his Majesty's subjects at large, but had at all times been an exclusive trade granted to exclusive Companies under charters; and long before the passing of any of these Acts of Parliament for the protection of our navigation, the trade in question had been subjected to a particular system of regulations adapted to its peculiar nature, and made under the immediate authority of the crown, legislating by virtue of its prerogative for the foreign trade carried on by its subjects. The foundation of the system was laid by the charter of Queen Elizabeth already mentioned. By this charter dated the 31st December 1601, she gave to a Company thereby incorporated, under the name of the Governor and Company of Merchants of London trading into the East Indies, the privileges of this exclusive trade, in the largest and most general terms that could have been devised, though not larger or more general than were afterwards employed in the Acts of Parliament relating to the same trade. This charter was addressed to the Earl of Cumberland, an eminent personage of that day, and to others; and invested them with a right of exclusive trade for 15 years, and full powers to carry on and regulate the same according to their own will and agreement, in the manner and under the forms pointed out in the charter. The charter was in these terms; viz.

* That the said corporation, their apprentices, fac-

tors

"tors or servants, shall and may, by the space of
 "fifteen years, from the feast of the Birth of our
 "Lord God last past, before the date hereof, free-
 "ly traffick and use the trade of merchandize, by
 "seas, and in such ways and passages already
 "found out and discovered, as they shall esteem
 "and take to be fittest, into and from the said
 "East Indies, in the countries and parts of Asia
 "and Africa, and into and from all the islands,
 "ports, havens, cities, creeks, towns and places
 "of Asia and Africa, and America, or any of
 "them, beyond the Cape of Bona Esperanza, to
 "the streights of Magellan, where any trade or
 "traffick of merchandize may be used or had,
 "and to and from every of them." These were
 the limits of the Company's trade to this day.
 And then followed this most material provision;
 namely; "That they were to use this great trade, in
 "such order, manner, form, liberty and condi-
 "tion, to all intents and proposes, as shall be, from
 "time to time, at any public Assembly or Court,
 "held by or for the said Governor and Company,
 "by or between them of the said fellowship or
 "Company of merchants of London, trading in-
 "to the East Indies, or the more part of them,
 "for the time being, present at such Assembly or
 "Court, the Governor, or his Deputy, being al-
 "ways present at such Court or Assembly, li-
 "mitted and agreed, and not otherwise, with-
 "out any molestation, impeachment or distur-
 "bance, any statute, usage, diversity of religion or
 "faith, or any other cause or matter whatsoever,
 "to the contrary notwithstanding." They were
 by the same charter empowered to make rea-
 sonable laws, constitutions, orders, and ordinan-
 ces, for the good government of the Company,
 "and

“ and for the better advancement and continu-
 “ ance of the said trade and traffick.”

Now, this splendid trade given by Queen Elizabeth to this corporation, which had subsisted with all its privileges for a period of upwards of 200 years, was supposed to have afterwards dwindled down to a trade between two or three English factories; the trade to all these territories, embracing the whole coasts and islands of Asia, and a great part of Africa and America, was to be restricted to Bombay and Madras as soon as they became ours; and this corporation was to be told, that they must enter into bond, to deliver their Sugar, and Indigo and Fustick, and he knew not what, at one or other of these ports, or else to carry them to some port of England or Wales, or to the town of Berwick-upon-Tweed! Of what use, Mr. FERGUSON would ask, was the trade granted by this charter to be, this trade into, and from and in all countries, islands, ports, &c. from the Cape of Good Hope to the straits of Magellan, if it was to be afterwards shackled with these bonds? of what use was this great trade to be to this privileged Company,—a trade too, as their Lordships would perceive, associated with powers to that said Company, to make such regulations for the government of the same as they might think fit? and Mr. FERGUSON would contend, that by this charter, the Directors of the East India Company had, and that their successors to this day have the authority, to make regulations for the carrying on of all trade by British subjects between port and port within these limits. This, Mr. FERGUSON maintained, must be the law, unless
 any

any man could lay his hand upon a subsequent statute, and shew that it had deprived them of that authority, and subjected the trade to some other system of regulations. The only single limitation imposed on them by the charter of Elizabeth, was contained in the clause following that which he had read, and ran thus; viz. "So always
 "the same trade be not undertaken nor addressed
 "to any country, island, port, haven, city,
 "creek, town or place, already in the lawful
 "and actual possession of any Christian Prince
 "or state, as at this present is, or at any time
 "hereafter shall be in league or amity with us,
 "our heirs or successors, and who doth not or
 "will not accept of such trade, but doth overtly
 "declare and publish the same to be utterly
 "against his or their good will and liking." Thus, the only exception to an entire and uncontrouled freedom of commerce within the limits designated by this charter, was that the Company should not force their trade upon any Christian Princes, contrary to their liking. They were still left at liberty to trade even with any Christian Prince, provided he did not object to their so doing. But if the seizure now before their Lordships was legal, there was an end, Mr. FERGUSSON said, from this time, to the trade of the Company and of India with the dominions of any Christian or other foreign Prince whatsoever;—you must trade with your own settlements, and with none else.

This charter of Elizabeth was confirmed by that of James the 1st, which revived the former charter, and gave the same, together with some new privileges, to the Company for a further period,
 and

and nearly in the same words. Both of these charters prohibited all trade within the limits before-mentioned, to all his Majesty's subjects not having the license of the Company, under the penalty of forfeiture of ships and goods. It would be material for their Lordships to observe, that the charter of James was in full force at the time when the Navigation Act was passed, and yet was not in the slightest manner referred to in any part of it, which it most assuredly would have been, if the privileges granted by the charter had been meant to be abridged or in any way affected by the enactments of the new statute.

Then came the charter of the 3d of April 1661, granted to the Company by Charles the 2d, in the thirteenth year of his reign ; which charter was the most material of all with reference to the present question, inasmuch as it came so near in point of date to the passing of the Navigation Act. Mr. FERGUSSON took it for granted, that there were some men learned in the law among the councillors of the crown at that period of our history. This charter must have been drawn up by the ministers of Charles, under the sanction of these learned persons ; and of this he was certain, that no Judge, Chancellor or Attorney General would have advised or permitted the King (if he might so express himself,) to grant such a charter, if that act, in all its parts, was then in force with regard to India, and applicable to its trade. This charter was wholly at variance with those provisions of the Act, which their Lordships were this day called upon to apply. It constituted therefore, Mr. FERGUSSON contended, the very best and most learned contemporary exposition possible

of the law itself, in its supposed relation to the trade between port and port in this country, as interpreted by the great lawyers of that day. This charter, it would be seen, confirmed the two former charters of Elizabeth and James in the fullest terms, and granted to the Company for a further period, and in the same words, the exclusive privilege of trade and traffick, "into and from the said " East Indies, in the countries and parts of Asia " and Africa, and into and from the countries " and parts of Asia and Africa, and into and from " the islands, ports, havens, cities, creeks, " towns and places of Asia, Africa, and Ameri- " ca, or any of them, beyond the Cape of Bona " Esperanza, to the streights of Magellan, &c." Now, the trade here described, as soon as it had attained its full growth, and was in its highest state of prosperity, was to be crushed and annihilated for ever; for, if the Company or those licensed by them were to give bonds, in the terms of the 18th and 19th Sections of the Act of the 12 Car. 2, c. 18, if those Sections should be held to apply to the commerce of India, there could be no such thing as a trade from place to place in the articles in the Act enumerated, and which had become the staples of India.

In the charter of Charles 2d, there then followed the same provision which Mr. FERCUSSON had already cited from the charter of Elizabeth, restraining the Company from undertaking any trade to the territory of any Christian Prince, who should not accept of the same. It followed therefore, that the Company had, by the charter of Charles 2d, a right to trade to the countries of Christian Princes, with the consent of such Prin-

ces:—they had a right therefore to go to the Portuguese settlements,—they had a right to trade to Goa for instance, if it was not a trade against the liking of the King of Portugal. But how were they to give this bond, if they engaged in such a trade? Their bond would have been forfeited, by their loading any one of the enumerated articles on board a ship, bound for a port, to which the charter said they might freely trade. It was impossible therefore, that these provisions of the Act of the 12 Car. 2. could have extended to this Country. And to prove that they did not, their Lordships had only to look to this charter, where they would find, as he had said, an exposition of the Act from the King, aided by all the wisdom of his Council, within a few months after the Act itself had passed, an exposition much better and more to be relied on, in the decision of this momentous question, than any which could now be given.

SIR FRANCIS MACNAGHTEN. “Which was first in point of time, the charter of Charles the 2d, or the Navigation Act?”

ADVOCATE GENERAL. “The Navigation Act was first, my Lord.”

CHIEF JUSTICE. “Would it not serve, do you think, to fill the full measure of that argument, if it were understood, that Parliament did not contemplate any English plantation as existing here at that time, and consequently that there could be no subject matter for the act to operate on?”

ADVOCATE GENERAL. “There certainly was not, my Lord. The crown had no possession whatever at that time, in the East Indies.” It

was some time between the months of April and December 1660, during the session of Parliament for that year, that the Act of Navigation was enacted. The new charter to the East India Company followed, in the ensuing month of April 1661. And it was not till the 23d of June 1661, that the marriage treaty of Charles with the Infanta of Portugal was signed; whereby the settlement of Bombay was transferred to Great Britain. Nor would it be said, that this cession was in prospect, and within the contemplation of Parliament, when the Act of Navigation was passed, as had been conjectured by one of his learned friends; for the article relating to Bombay, was a *secret* article of the treaty; and could not therefore have been known or contemplated by Parliament, at the time of passing that Act. Besides, their Lordships would observe, upon the bare reading of the sections of the Act of Charles 2d, on which it was sought to condemn this vessel and cargo, that Parliament did not mean to legislate for things that were to come; but for things as they *then were*.

And this led Mr. FERGUSON to the consideration of the Act itself, with the breach of which his clients had been charged. And here, he should relieve his learned friends on the other side, from any further trouble upon one point of this case. They had taken much pains to prove what it had never been his intention to contest, namely, that the great, general maxims of the Navigation law extend to this country. Those maxims, Mr. FERGUSON apprehended, were to be found in the first Section of the Act. He admitted, that this Section applied prospectively to future acquisitions, as well as to our more ancient possessions.

possessions. And indeed, after the decisions which had already passed on the subject at home, it would be unbecoming in him to contend, that the principles of this first Section were not to be received as law by every Court of Justice, under whose cognizance they might come, in every country where the King had inheritance. One of these maxims was, that all trade between Great Britain and "any lands, islands, plantations, or territories to his Majesty belonging, or in his possession, or which might thereafter belong to, or be in the possession of his Majesty, his heirs and successors, in Asia, Africa, or America, should be carried on only in ships," owned by His Majesty's subjects in Great Britain, or owned by his subjects in his foreign possessions, and built there. The other was for the encouragement of English seamen; and required, that the master and three-fourths of the mariners at least, of every ship engaged in such trade, should be English. The Act indeed did not specify what persons were to be considered English seamen; but giving a large construction to the term "English," it might be held to have meant the King's subjects, whether natives of England or of any territories or possessions belonging or to belong to the King of England. This was, however, a point in no way material to the question this day under discussion, or to the trade of India as it now stands; for by the late Register Act, it was provided for the employment of Asiatic sailors generally in the trade between port and port within the Company's limits, and also under certain circumstances in the trade between India and Europe. That, however, the trade between these territories and Europe, could not, under the 1st Section of the Navigation Act,

be carried on but in ships British owned, and that all such ships must since the 26 Geo. 3d. have been built in the United Kingdom, or in the British territories abroad, Mr. FERGUSON admitted. These were the general maxims of our "Navigation system," to which Sir William Scott alluded, when he said, that those maxims were proper in point of principle to be applied to the British possessions in the East; not those provisions of detail contended for on the other side. It might very safely be assumed, that, when Sir William Scott talked of the "general maxims of our Navigation system," he had nothing in his mind, about custom-house entries, or cockets, or certificates or bonds, to regulate the carrying of rice, indigo, sugar or fustick!

He (Mr. FERGUSON) had admitted all that his learned friends' cases had been, or could be cited to prove. They had referred to two cases, one of a Danish, and the other of a Swedish ship, which had cleared out from British ports in India, bound with cargoes of East India produce to the continent of Europe, before the Act of the 37 Geo. 3. had passed. In adjudging the policies of insurance in those cases to be void, the only point which the judges had decided, was merely that you shall not trade to the British territories in India in foreign ships owned and navigated by foreigners, in contravention of this broad provision of the Navigation Act. It was for that reason, that the voyages of these ships were pronounced to be illegal, and not for their having omitted to enter into this bond,

this nonsensical bond, by which you are to engage to carry your sugar, indigo and fustick, only to some other English Plantation, or to a port of England or Wales, or, of all places in the world as a mart for indigo, to the town of Berwick-upon-Tweed! These sections, the 18th and 19th of the 12 Car. 2, had a distinct and specific reference to the trade of those colonies, which England at that time possessed; and it was clear, that all which the law contemplated was, to exclude foreigners from any participation in that colonial trade. The meaning and effect of these sections, except in as far as they had been relaxed by later statutes, were, that foreigners who may wish to purchase your colonial produce, shall resort to England for it, that the goods enumerated shall be carried only to England or some of her colonies, and that no foreigner shall taste your sugar, unless he goes for it to some port of England, and there pays a duty on it to the King.

It had been said by his learned friends, that the great purposes of the 18th and 19th sections of the Navigation Act were to protect the revenue of the crown, and to increase the King's customs. Be it so. But what increase had the revenue of the crown ever derived from the receipts of the customs at Bombay? It was well known, that His Majesty had never drawn any revenue whatever from the trade within the Company's limits, which was all along meant to be subject only to such commercial and fiscal regulations as the Company might think fit to impose upon it. The supposed policy therefore had here never had existence.

There

There were two other Acts of Parliament subsequent to the 12 Car. 2, which extended these restrictions of the 18th and 19th Sections to some other articles besides those enumerated in that statute, and to which his learned friends on the other side did not appear to have attended. He alluded to the Act of the 3d and 4th of Anne, which added to the list, the articles of "rice and molasses;" and to another Act passed so late even as the 8th of Geo. 1, which set out with reciting, that great frauds had been committed, in regard to the exportation of "copper ore" from these said plantations, and then went on to subject that commodity also to the same system of regulations! If the law therefore was to be applied at all, in the manner contended for by his learned friends, it must apply to the article of rice, as well as to all the others; so that, at this day, you could not lawfully send a dhoney, with an hundred bags of rice in it, to the Beebee of Cannanore, even though there were a famine in her country! No! If she wants your rice, you tell her, she must send for it to England, or to Wales, or to the town of Berwick-upon-Tweed! It would avail nothing for her purpose, your shipping the rice to Madras; for there it must remain, or, if you export it again, it must be under another plantation bond, which would subject you to forfeiture, if you attempted to carry it to Cannanore. Are not these absurdities, Mr. FERGUSSON asked, which never could have entered the contemplation of any set of men calling themselves statesmen or legislators? The object of the provision was, that we should supply foreign states with our colonial produce through the mother country; and where, from the nature

nature of things, that object was attainable, our policy was, that it should be effected. As applied to the trade between our West India colonies and Europe, the system was practicable and possible. But here in this country, its application would be utterly absurd and unjust.

CHIEF JUSTICE. " And even with respect to " West India produce, the rule has been relaxed. It can now, for instance, be carried to " Malta."

As to the object of policy, Mr. FERGUSSON continued, that was here entirely out of the question; and it obviously could never have entered the contemplation of the framers of the Act, that it was to affect this distant trade, this trade between port and port within the limits of the Company's charter, or that all such trade was to cease, unless in as far as it could be carried on through the medium of the ports of Great Britain. It never could have been contemplated or intended, that the cotton, for instance, intended for the consumption of China, should first be carried to some port of Great Britain, thence to be re-exported to Canton.

Now, as to this term " Plantation," it was not Mr. FERGUSSON's wish to cavil about a word. Its etymology might, however, have reference to the planting either of roots or men. In common language, its ordinary application was to some society of men, sent to plant, till, and people a foreign land. There could not however be a better definition of it, nor one so applicable to the present question, as that which was to be found in one of these very Navigation laws, the 15 Car. 2, c. 7, which described his

Majesty's plantations, as places "beyond the seas, inhabited and peopled by his subjects of his kingdom of England." Now, how could this description possibly apply to the British territories in this country? What! the empire of Aurangzebe inhabited and peopled by the people of England! Mr. FERCUSSON could not help smiling, he said, when he read the other day in the newspaper, that, on the suggestion of one of the counsel in the course of the late proceedings at Bombay, that the condemned sugar was of the growth of Oude, and did not therefore come under the penalties of the act, the counsel on the other side, laying his hand upon an invoice, said, "oh "no! here you see, it is Benares sugar!" Benares an English plantation! What would be the astonishment of the Benares Bramins to find, that they had all become English planters! What! this immense country of India, with a population of sixty millions of inhabitants, governed, except within the narrow limits of these three settlements, according to their own laws and institutions, was this a Plantation, an English Plantation,—where an Englishman cannot hold a foot of land, or own a cocoanut tree, without a special permission! It were an abuse and perversion of language to call it so. And Mr. FERCUSSON would be content to rest his whole case on this single fact, that in no one Act of Parliament, from the first that was passed relating to East India affairs down to the last Act of the 55th of the King, were the dominions of Great Britain in the East called "Plantations." They were uniformly described

as territories. Why then, he would ask, should you take them to be Plantations?

Their Lordships had observed, that there was a very material difference between the two sections of the Navigation Act, as regarded the question now at issue. The 1st Section of the Act was expressed in much larger terms. It applied not only to plantations, but to all lands, islands and territories to his Majesty belonging, or which might hereafter belong, to him. The object which the framers of the Act had here in view, was founded on principles of lasting policy,—a policy which it was supposed would endure for ever. It was proper therefore, that the terms should be commensurate to the object. No circumstances, no situation could change the expediency, of confining as far as possible, the trade of the distant possessions of Great Britain, to ships British-built, and manned with British seamen. Be they lands, be they islands, be they plantations, or be they territories, this policy equally applied. It was a standing and eternal policy; and could require no specific Act to confirm it, with reference to any given place. But when the Parliament came to legislate as to minor points, as to the mode in which this trade in British ships was to be carried on, how different were the terms which they employed! They then spoke of plantations only; and it was obvious, that they intended to legislate only for those plantations, as they then stood.

CHIEF JUSTICE. “The distinction is still stronger. It confines the operation of these Sections, not to Plantations only, but to En-

“ *g*lish Plantations; whereas the 1st Section
 “ of the Act applies to all lands, islands, plan-
 “ tations or territories to His Majesty belong-
 “ ing, or in his possession. It is fair to presume
 “ therefore, that there are countries belonging
 “ to the crown, not intended to be included in
 “ the 18th and 19th Sections. Any territory of
 “ Spain for instance, or of France, though in
 “ the possession of the crown, would not, I
 “ conceive, come under these clauses. France
 “ indeed, was once under subjection to the
 “ crown of Great Britain.”

Their Lordships, continued Mr. FERCUSSON,
 were thus required to say, that the empire of
 India was an English Plantation, that the pro-
 duce of these extensive provinces, Bengal, Be-
 har, Orissa and Benares, was the growth of a
 country peopled and planted by Englishmen!
 If this were not meant to be contended, then
 there was nothing at all in the case. The two
 enactments were for totally different purposes;
 and Mr. FERCUSSON would presently shew, that
 the restrictions of the concluding sections could
 never have been meant to apply to any coun-
 tries, but the colonies under the immediate do-
 minion of the crown, which had King's Gover-
 nors, King's Custom-houses, and all the other
 machinery necessary for carrying those restric-
 tions into effect.

And here, he would take occasion to call their
 Lordships' attention to another subordinate pro-
 vision, which was contained in the 2d Sec-
 tion of the Navigation Act; and beg their Lord-
 ships' to mark, how absurd such a provision
 would be, as applied to the situation of things
 in

in this country. By that section it was enacted;
 “ that no alien or person not born within the
 “ allegiance of our sovereign Lord the King,
 “ his heirs and successors, or naturalized, or
 “ made a free denizen, shall exercise the trade
 “ or occupation of a Merchant or Factor in any
 “ of the said places, upon pain of the forfeiture
 “ and loss of all his goods and chattels.”

Now, how utterly preposterous was the inference, that, from the moment when we became masters of Madras and Calcutta, not a single native shroff, or banyan, or merchant was to exercise his occupation within those cities ! Why, without them, without the aid of their capital and services, we could not have carried on any trade at all ! Yet, if this had been the law of our Indian possessions, not a single Armenian, not a Mussulman or Hindoo, could have engaged in commerce either as a principal or agent, at any of our factories, without subjecting himself to the forfeiture of all that he possessed !

The same section then went on to enact, that all Governors of such lands, islands, plantations and territories, should take an oath to do their utmost, for carrying into effect the preceding clauses of the Act. With respect to this oath, it had been admitted on all hands, that none such had ever been administered to any Governor General or Governor in India, or had ever been referred to as necessary by any Act of Parliament relating to this country. And, now that there had been Governors in India for more than a century and a half, could it possibly be conceived, that, if such a necessity existed,
 it

it should never have once occurred to any person during all that time, that this oath was to be taken? His learned friends had said, that this was an omission, an unaccountable omission! And such it certainly was; an omission of the King and Parliament, an omission of the legal advisers of the Crown, an omission of all the constitutional learning of England, and of all the learning of India, for an hundred and sixty years!

CHIEF JUSTICE. "I fear, that an argument
"on the second clause of the Act, must go to
"dominions generally; the terms there used, be-
"ing equally large as in the first clause."

Mr. FERCUSSON admitted, that his argument was subject to that observation:—but it made it the stronger, as he submitted; for it shewed, that even the larger words might be used, and those words not be held to extend to this country, where the subject matter could have no application to it. It would be seen by referring to the clause itself, that, like all the other subordinate provisions of this statute, it never could have applied or been intended to apply to the British possessions in India. The words of this clause were these:
"And all Governors of the said lands, islands,
"plantations or territories, and every of them,
"are hereby strictly required and commanded,
"and all who shall hereafter be made Governors
"of any such islands, plantations or territories,
"by his Majesty, his heirs or successors, shall
"before their entrance into their government,
"take a solemn oath to do their utmost, that
"every the afore-mentioned clauses, and all the
"matters and things therein contained, shall be
"punctually

“punctually and bonâ fide observed.” It was clear therefore, that this enactment was applicable merely to Governors made or appointed by the King, and to no others. It did not therefore apply to any Governor appointed by the East India Company. By the Act of the 7 and 8 Gul. 3. c. 22, which enlarged the obligation of this oath, so as to include the 18th and 19th Sections, and all the other clauses of the Navigation Act, as well as the two first, to which it had before been understood exclusively to apply,—by this Act it was provided, that that all future appointments of Governors of the proprietary states in North America, (of which there were then several, such as Pennsylvania,) should be made subject to the approval of the King; and that every such Governor should be required to take the same oath, for enforcing the Navigation laws, which the law exacted from Governors of the King’s own nomination. But here in this country, the King had not even the approval of the Governors. The appointment of a Governor by the Court of Directors, was declared by express law to be a legal appointment, without the approbation of the King; and the crown could only interfere, in case the Directors should omit to appoint any person for a certain time after the office had become vacant.

Mr. FERGUSSON could not however dismiss this part of the question, as to the construction of these 18th and 19th Sections of the Navigation Act, without calling their Lordships’ attention more particularly to those clauses themselves, as well as to the subsequent statutes, which had been enacted

enacted with a specific reference to those clauses. He then proceeded to read the 18th and 19th Sections of the Act in detail. By the latter Section it was directed ; “ That, for every ship or vessel, “ which shall sail out of England, Ireland, Wales, “ or town of Berwick-upon-Tweed, for any En- “ glish plantat on in America, Asia or Africa, suf- “ ficient bond shall be given with one surety, to “ the chief officers of the custom house of such “ port or place from whence the said ship shall “ set sail, to the value of one thousand pounds, “ if the ship be of less burthen than one hundred “ tons, and of the sum of two thousand pounds, “ if the ship shall be of greater burthen ; that, in “ case the said ship or vessel shall load any of the “ said commodities at any of the said English “ plantations, that the same commodities shall be “ by the said ship brought to some port of Eng- “ land, Ireland, Wales, or the port or town of “ Berwick-upon-Tweed, and shall there unload “ and put on shore the same, the danger of the “ seas only excepted. And for all ships coming “ from any other port or place to any of the afore- “ said plantations, who by this Act are permitted “ to trade there, that the Governor of such En- “ glish plantations shall, before the said ship or “ vessel be permitted to load on board any of the “ said commodities, take bond in manner and to “ the value aforesaid, for such respective ship or “ vessel, that such ship or vessel shall carry “ all the aforesaid goods that be laden on board “ in the said ship, to some other of his Majesty’s “ English plantations, or to England, Ireland, “ Wales, or town of Berwick-upon-Tweed. And “ that every ship or vessel, which shall load or “ take on board any of the aforesaid goods, until
“ such

“ such bond given to the said Governor, or certificate produced from the Officers of any Custom House of England, Ireland, Wales, or of the town of Berwick, that such bond have been there duly given, shall be forfeited, with all her guns, tackle, apparel, and furniture, to be employed and recovered in manner as aforesaid.”

A subsequent Act of Parliament, passed in the 15 Car. 2, had denounced certain penalties against any Officer of the Customs, who should suffer any of the enumerated articles to be imported, in contravention of the aforesaid sections of the Navigation Act, into any other country or place whatsoever, until they should have been first “unladen bonâ fide and put on shore in some port or haven of England or Wales, or in the town of Berwick;” purposely leaving out the word “Ireland,” in order to prevent goods from being carried from the plantations to that country, to the prejudice of the King’s revenue in England. This however was not found to be sufficient. And a clause was introduced accordingly into the Act of the 22d and 23d of the same reign, c. 26, whereby the condition of the plantation bond was changed; and the word “Ireland” expressly excluded. Mr FERGUSON wished particularly to call the attention of their Lordships to the preamble of this enactment, which he considered very material to the present question, as shewing the strictness with which it was considered necessary, that this bond should be construed. The preamble, after reciting the clause of the Act of the 15 Car. 2. above referred to, wherein the word “Ireland” had been omitted, proceeded thus; “Notwithstanding which, some persons taking advantage of the not mentioning the repealing of the word Ireland, in one

" clause in an Act of Parliament made in the
 " twelfth year of his Majesty's reign, intituled, ' An
 " Act for the encouraging and increase of Ship-
 " ping and Navigation,' where bonds are directed
 " to be taken for all ships that shall lade any su-
 " gar, or other commodities therein particularly
 " mentioned, in any of the said plantations, that
 " the same commodities shall be by the said ship
 " brought to some port of England, Ireland,
 " Wales, or town or port of Berwick, and shall
 " there unload, and put the same on shore, the
 " said persons having either refused to give bond
 " for the return of their ships in such case to Eng-
 " land, Wales, or town or port of Berwick only;
 " or having given such bonds, have nevertheless
 " gone with their ships to Ireland;" &c. We had
 here then the authority of the legislature itself, as
 to the strict manner in which this bond was to be
 construed. The law had already prohibited the
 landing of any of the enumerated goods any
 where but in England, Wales, or Berwick. Yet
 in the face of this prohibition, the master of a
 trading vessel held this bond in his hand, and
 said, " I mean to go to Ireland;" and the word
 " Ireland" still standing unrepealed in the bond,
 the law could not prevent him. The clause
 was to be complied with in the very terms
 of it, and in those terms only. With what
 consistency then could the word " Plantation" be
 construed, as comprehending all the terms that
 were associated with it in the 1st Section of the
 Act? and why should that word in the condition
 of the bond, be held to mean, not only a sugar
 island, but a vast and civilized empire,—an em-
 pire, which has certainly neither been peopled or
 planted by you, and which contains perhaps six
 time

times the population, and is of six times the extent of the country, whose plantation it is alleged to be ?

The statute of the 22d and 23d Car. 2, which he had just cited, went on to direct the manner in which such plantation bonds were to be taken in future, leaving out the word "Ireland" altogether in the condition of the obligation. "And by 7 and 8 Gul. 3, c. 22, s. 13, all such bonds entered into in the plantations, were to be subject to this condition, namely ; " Within " eighteen months after the date thereof, (the danger of the seas excepted,) to produce certificate " of having landed and discharged the goods there- " in mentioned, in one of His Majesty's planta- " tions, or in England, Wales, or Berwick upon- " Tweed." And here their Lordships would observe, that no other word but " Plantation" was used in this clause, or in any clause of any of the subsequent Acts having reference to these bonds. This enactment of the 7 and 8 Gul. 3, was recited in the 1st Section of the Act 15 Geo. 2. c. 31, which prescribes a similar condition to be introduced into all plantation bonds which might be thereafter taken or entered into in Great Britain, requiring that such certificate be produced within eighteen months after the date of the bond, and moreover that it be a certificate from the Collector and Comptroller of the port, at which the goods had been delivered. Now Mr. Fergusson did hope, that no bond of this description had been given at home, by any of the free traders now in the port of Calcutta ; for if there had, such bond must of necessity be forfeited, the means of fulfilling its conditions, as far as concerned this country, being entirely without their power. To this day, there was no such officer known

in this country, as a Comptroller of Customs ; nor were there any Collectors of his Majesty's Customs here, to give the necessary certificate. In the West Indies indeed, and in all our American colonies, for which the Parliament were then legislating, such officers were to be found. It was quite clear therefore, that such a provision never could have been intended to apply to the trade of this country, nor indeed to any trade but the *colonial* trade of Great Britain, properly so called.

In further prosecution of his argument, as to the marked difference between the import and extent of the words employed in the 1st, and in the 18th and 19th Sections of the Navigation Act, Mr. FERGUSON next proceeded to advert to the Register Acts. And here he could not but acknowledge, that it struck him as somewhat unaccountable, that, at a moment when a ship was about to be condemned in another Court for not having a plantation bond, a case was reported to have been cited in *support* of the intended judgment, which case appeared to be, the reversal by the King in Council, upon appeal from a judgment of the Madras Court, whereby a ship had been condemned for want of a Register, and the grounds of that reversal were stated to have been, that there were no officers then in India of the description pointed out by the legislature, for carrying the Register Acts into execution. Was not this in terms deciding the principal case at that time under discussion, and did it not decide the case now before the Court? Where were the officers in India competent to receive these bonds, or to grant these certificates?

If that decision of the King in Council which had been alluded to, was a true and legal decision, which

which he believed it to be, (for no man could in justice be liable to forfeit his property, for having omitted to do that, which in the nature of things it was impossible for him to have done,) if their Lordships admitted with him the authority of that decision, upon what principle, he would ask, was the condemnation which the Promoveut this day prayed for, to be sustained ?

The reversal of the *Malras* case on the Register Act, proved infinitely more than was necessary, for the decision of the case before their Lordships in favor of the Impugnant. The terms of the Register Act, (he meant those of the great Register Act of the 26 Geo. 3. c. 60, for there were others before of more limited operation,) were as large, he said, as those employed in the 1st Section of the 12 Car. 2, c. 18, which had been already so much discussed. The 26 Geo. 3 c. 60, directed the registry of all ships of the description in the Act mentioned, built in Great Britain or Ireland, Guernsey, Jersey, and the Isle of Man, or the colonies, plantations, islands, or *territories*, "which then belonged or might thereafter belong to, or be in the possession of, His Majesty, his heirs and successors."

It was clear, that the legislature here used those broad and large terms, to which they always had recourse, when they meant to make general laws, applicable to all the King's possessions, fit for all times, and to endure for all ages. Such was the law in question, a law having nothing less in view than the encouragement of British shipping,—an object equally to be provided for, in regulating the trade of the British possessions in the East Indies, as in regulating that

of our plantations and colonies in the West. But when they came to minor regulations, such as those of the 18th and 19th Sections of the Navigation Act, then they had recourse to terms suited to the state of things as they were at that time, —then they used the word “Plantations” only. How then was it possible to conceive, if the principle of the decision in regard to this Madras case be just, if even a statute like this, of which the words surely were large enough to have given it effect in any part of the world, had it been possible to carry it into execution, if even this statute was not applicable to this country, as not being capable of execution in it, until the defect was remedied by a very late Act, how a fortiori, he said, was it possible for their Lordships to conceive, that an antiquated statute, which had slept now for more than one hundred and fifty years, in which was to be found the term “Plantation” only, a word of so much lesser signification than those employed in the Register Act, should extend to the case now before them? Even if it had been within the terms of the Act, which Mr. FERGUSON had shewn it not to be, it could not have been within the forfeitures of the Act, because the party had no means of carrying its provisions into effect.

Mr. FERGUSON said, he had already observed, that the trade of India was from the earliest time regulated upon different principles, and carried on under different provisions from every other trade.—Even in the statute of Charles 2d, in a clause which had been cited on the other side, East India commodities were specifically exempted from the operation of certain restrictions of that Act, and it was declared not to be necessary, that the places from which they might

be imported, should be the very places of their growth. This was the 13th Section, and was as follows, viz. " Provided also, that this Act, or
 " any thing therein contained, extend not, or
 " be meant to restrain the importing of any East
 " India commodities, loaden in English-built
 " shipping, and whereof the master and three-
 " fourths of the mariners at least are English,
 " from the usual places for loading of them in
 " any part of those seas, to the Southward and
 " Eastward of Cabo Bona Esperanza, although
 " the said ports be not the very places of their
 " growth."

The very terms of this enactment presupposed the existence of a trade between port and port in this country, which could not have been carried on under this system of plantation bonds,—of a trade, namely, between the places of growth of the commodities usually carried from hence, and the ports where they were shipped for England.

CHIEF JUSTICE. " And there it became necessary to provide for the security of the trader, by this exception; for the moment he went out of the Company's limits, then the general law of England attaching upon him the forfeitures of the Navigation Act would otherwise have applied."

This exception therefore, the ADVOCATE GENERAL continued, was quite irreconcilable with the use of plantation bonds, and was of itself, he thought, enough to do away all idea of the applicability of the 18th and 19th Sections of the Navigation Act to this country.

He would now proceed to a most important part of his subject; namely, to consider what rules

rules and principles, founded on legislative enactment, *were* applicable to the trade of this country. And, for that purpose, he would call their Lordships' attention, to the very first Act passed by the legislature relative to the commerce of the East Indies; he alluded to the Act of the 9th and 10th Gul. 3. c. 44, one provision of which seemed quite sufficient of itself to put an end to the present question.

It would be seen from this Act, that, although the legislature had subjected the trade within the Company's limits to a totally different system from that which they had applied to the trade of his Majesty's Plantations; they had yet not lost sight in the former case more than in the latter, of those precautions for the security of the King's revenue, (which the 18th and 19th Sections of the Navigation Act had immediately in contemplation as to other parts of the world,) as far as such precautions could be at all applicable to the trade of this country. It was true, that neither in this nor any other Act relating to the East Indies, was there any provision similar to those of the 18th and 19th Sections of the Navigation Act, for regulating the trade between port and port within the Company's limits, for to that trade the policy in question had no relation; but this Act of King William did fully provide for the objects contemplated by these 18th and 19th Sections of the 12 Charles 2d, in as far as concerned the trade between India and England. In the 69th Section of this Act of the 9th and 10th Gul. 3, it was enacted; "That no Company or particular person or persons, who shall have a right, in pursuance of this Act, to trade to the East Indies, or other the parts within the limits

" limits aforesaid, shall be allowed to trade thi-
 " ther, until sufficient security shall be first given
 " (which the Commissioners of the Customs in
 " England, or any three or more of them for the
 " time being, are hereby authorized and required
 " to take, in the name, and to the use of His Ma-
 " jesty, his heirs and successors,) that such Com-
 " pany or particular persons, shall cause all the
 " goods, wares, merchandizes, and commodities,
 " which shall at any time or times hereafter, dur-
 " ing the continuance of this Act, be laden by or
 " for them, or any of them, or for their or any of
 " their accounts, in any ship or ships whatsoever,
 " bound from the East Indies, or ports within the
 " limits aforesaid, to be brought (without brea-
 " king bulk) to some port of England or Wales,
 " and there be unladen and put on land, (the dan-
 " gers of the seas, enemies, pirates, constraints of
 " princes and rulers, and barratry of seamen, ex-
 " cepted;) and in case there be any difficulty
 " or dispute in the acceptance of any such secu-
 " rity, such difficulty and dispute shall and may
 " be determined by the Lord Chief Baron, and
 " other the Barons of the Court of the Exchequer,
 " or any of them, according to his or their best
 " judgment and discretion." And then followed
 this provision; viz. " That all goods and merchan-
 " dizes, belonging to the Company to be erected
 " as aforesaid, or any other traders to the East In-
 " dies, and which shall be imported into England
 " or Wales, as aforesaid, pursuant to this Act,
 " shall by them respectively be sold openly and
 " publicly by inch of candle, upon their res-
 " pective accounts, and not otherwise; upon pain
 " that the same, or the value thereof, shall be for-
 " feited and lost."

Here, their Lordships saw, that persons trading between Great Britain and the East Indies, were required to enter into a security, not only to deliver at an English port, all goods whatsoever which they might take on board at any port within the Company's limits, but not even to *break bulk* during the course of their voyage. And it was not unworthy of remark, that the last part of this Section, which required all such East India goods to be sold "by inch of candle," has been repealed by a clause of the 53d of the King, leaving the provision in regard to ships not "breaking bulk, &c." as it stood. Where then could possibly be the occasion, for this bond about Ginger, and Indigo and Fulltick, when by this Act of William, which had been in force now for above an hundred years, all ships trading from India were required to carry every thing which they took on board, without breaking bulk, to an English port? Nor was this all. By an Act afterwards passed in the 6th of Anne, c. 3, reciting the Act of William, a form of bond was prescribed, into which the Company were required to enter for every ship which they sent abroad, in order to give the better effect to these provisions of the Act of the 9th and 10th Gul. 3. Nor did the security required from Indiamen by this Act of Queen Anne, differ more in its nature from that exacted from West India ships under the Act of the 12. Car. 2, than it did in the extent of its penalties. Under the Navigation Act, the penalty did not exceed 2000*£* for the largest vessel that could be employed; but, in legislating for the ships employed in carrying on the trade to the East Indies, a penalty of no less than 2500*£* for every hundred tons of the ship's burthen, was established by this Act

Act of Anne; so that, for a ship of a thousand tons, the whole penalty would amount to the sum of 25,000 £. And the condition of the bond was this; viz. 'That all the goods, wares, merchandizes, and commodities, which shall at any time or times hereafter, during the continuance of this present intended voyage, be laden by or for the said Company, or any of them, or for their, or any of their accounts in the said ship, from the said East, Indies, or parts aforesaid, shall be, without breaking bulk, brought to some port of Great Britain and there be unladen and put on land, (the danger of the seas, enemies, pirates, constraint of Princes and rulers, barratry of seamen, and necessary provisions, stores and merchandizes for the people and garrison of St. Helena, only for their own proper consumption, excepted.)'—Was it then to be said, that I am to give *two* securities? Were *both* these bonds to be required of me? Was it not clear, that if the law respecting plantation bonds ever applied to the trade between this country and Great Britain, it became a dead letter, from the moment that the statute of the 9th and 10th of William was passed. It was well known, that the bonds required by the Act of the 6th of Anne, had been regularly given by the Company's ships. What then was the meaning of this 19th Section of the 12 Car. 2, as applied to them? (for if a plantation bond was necessary at all, the Company must give it as well as others.) Were they, after having already given security to the King, that the *whole* of the cargoes shipped by them, should be carried to England *without breaking bulk*, were they to be restricted from loading these articles of Sugar, Tobacco, Cotton-wool, Indigoes,

Ginger and Fustick, without first entering into another obligation, binding them to do that which they were already pledged to do under a forfeiture of ten times the amount? and an obligation to whom? Why, to their own Governor! A bond from the master to his servant! So that, if this were the law, their Lordships might have to call on a cause at their sittings in this court, "The Governor General of India against the East India Company, for a debt on bond!" Here then was the absurdity which arose, from attempting to apply these plantation bonds to the trade of India,—here was one giving bond to himself. It shewed, that such bonds never could have been required with reference to this trade. The only bond applicable to the East Indies was that of the 6th of Anne, by which the Company were required to carry their cargoes to England without breaking bulk. There was an end therefore from thenceforth, to the plantation bond. Or rather these latter enactments afforded a complete proof, that it had never before entered the contemplation either of any lawyer, or of any man of common sense, that the plantation bond did or could apply to this country.

CHIEF JUSTICE. "That clause of the 9th and 10th Gul. 3, which relates to ships, does it make use of the phrase 'navigated according to law,' which appears in the later statutes?"

ADVOCATE GENERAL. "No, my lord; it was taken for granted, that the ships of the Company were navigated according to law." The 61st Section which gives the trade to the Company, was exactly in the same words as the charter of Queen Elizabeth. It authorized the persons in

whom

whom the trade was to be vested, "freely to traffick and use the trade of merchandize, in such places and by such ways and passages as are already frequented, found out or discovered, or which hereafter shall be found out or discovered, and as they severally shall esteem and take to be the best or best for them, into and from the East Indies, in the countries and ports of Asia and Africa, and into and from the islands, ports, havens, cities, creeks, towns and places of Asia, Africa, and America, or any of them, beyond the Cape of Bona Esperanza to the straits of Magellan, where any trade or traffick of merchandize is or may be used or had, and to and from every of them." Then, there was the charter of William, which passed upon that Act. This charter conferred on the new Company the exclusive privileges above recited, in the same terms; and contained many detailed regulations, with respect to the mode of carrying on the trade, the payment of customs, and other matters therewith connected, but no regulation with respect to the navigation of their ships. And when the words "navigated according to law," occurred in subsequent statutes, with reference to the ships employed in the East India trade, it obviously had reference to the manning of such ships, and not to their port-clearances or the goods which they might take on board. Until the Act of the 26th of the King, foreign-built ships might be lawfully employed as British, in this or any other trade, on oath being made, that no alien was an owner. But after the 26 Geo. 3, a difficulty appeared to have occurred, with respect to the registry of ships belonging to the Company, in consequence of many foreigners being proprietors of East India stock;

stock. And a clause had in consequence been introduced into an Act of the following year, modifying the form of oath to be administered previous to registry in such cases.

If there was any weight, Mr. FERGUSON said, in what he had submitted to the Court as to the operation of the Acts of Parliament which he had hitherto considered, his argument would be strengthened ten fold, by a review of the more modern statutes bearing upon the same subject. He would first call their Lordships' attention to the 37 Geo. 3. c. 117, b. which foreigners were permitted to trade to this country under regulations to be framed by the Court of Directors. Here was, from that moment, an end of your whole policy about bonding, for the delivery of Indigo, and Sugar, and so forth, at English ports. The Americans, he presumed, were not to give bond to carry the goods which they exported in their ships, to Great Britain or some English Plantation, or to Berwick-upon-Tweed! He particularly adverted to what had already fallen from the bench, on the subject of this foreign-trade Act. In the West Indies, the state of matters was very different. There, not one particle of sugar, the growth of any of our colonies, was permitted to be directly exported from thence to the United States on an American bottom; but here the Americans were permitted by treaty, to carry our sugar directly from this country to their own ports. How then, after this, were you to exclude your own countrymen from a commerce which you had opened to foreigners, and force English ships to give bond, that they would not land their sugar at any but a British port?

CHIEF JUSTICE “ From the time foreigners
 “ were admitted, the policy, I apprehend, turned
 “ round. The objects of the Navigation law
 “ would then be best answered, by encouraging
 “ instead of restraining, the exportation of our
 “ produce to foreign ports in British ships.”

Mr. FERGUSSON would argue it in this way.
 There was no bond but one, the bond prescribed
 by the Act. Would it be said, that a foreigner,
 previous to shipping any of these enumerated
 commodities at a port of India, must enter into
 this bond? If he did, he must either forfeit his
 bond, or carry the goods to some English port,
 the very place of all others from which he was
 expressly excluded by treaty, and where he would
 be liable to confiscation, if he attempted to land
 them. Was he then to go without bond? And
 if so, upon what principle could he possibly claim
 an exemption, which was to be denied to the
 subjects of the King?

But what would their Lordships say, when they
 came next to consider the 53d of the King, and
 the other recent legislative provisions, for regulat-
 ing the trade which was thereby thrown open and
 made free to all the subjects of the crown. The
 6th Section of the Act of the 53d of the King, c.
 155, that great section of the Act, which broke in
 for the first time upon the exclusive privilege of
 trade first granted by Elizabeth, was as follows :
 “ And be it further enacted, that, from and after
 “ the said 10th day of April, one thousand eight
 “ hundred and fourteen, it shall and may be lawful
 “ for any of His Majesty’s subjects, in common with
 “ the said United Company, to export in ships na-
 “ vigated according to law, from any port or ports
 “ within

"within the United Kingdom of Great Britain and
 "Ireland, to all ports and places within the limits
 "hereinbefore referred to, save and except the
 "dominions of the Emperor of China, any goods,
 "wares and merchandize, which can now, or may
 "at any time or times hereafter be legally export-
 "ed; and also, in common with the said Com-
 "pany, to import in ships navigated as aforesaid,
 "from any port or ports within the limits afore-
 "said, save and except as aforesaid, into the said
 "United Kingdom, any goods, wares and mer-
 "chandize, the product or manufacture of any of
 "the countries within the said limits, which can
 "now or may at any time or times hereafter, be
 "legally imported; subject nevertheless to the
 "several restrictions, conditions, and limitations,
 "in this Act contained." Here then, their Lord-
 ships saw, that this great trade was thrown open
 to the King's subjects at large, subject only to the
 several restrictions, conditions, and limitations, in
 the Act contained. Where then was your bond?
 As to the particular goods which private traders
 under this section were to be at liberty to carry
 from this country, the only limitation was, that
 they should be such as could be legally imported
 into Great Britain. Now, it would not be de-
 nied, that Indigo was a commodity of that des-
 cription. And Mr. FERCUSSON would say, that
 under this section, every man had a right to carry
 Indigo from any port of India to England, without
 giving bond, or entering into any other engage-
 ment not specifically required by this Act.

But Parliament were not satisfied with throwing
 open the direct trade to India. They provided
 for the making of future enactments, for a free
 trade

trade within the limits of the Company's charter, and for the trade between India and the intermediate ports.—The 20th Section was as follows:—
 “ Provided always, that nothing herein contained shall extend or be construed to extend to prevent the making, during the further term hereby granted to the said Company, such further provisions by authority of Parliament, as may from time to time be deemed necessary, for enabling His Majesty's subjects to carry on trade and traffick directly or circuitously, as well between all ports and places situated without the limits of the said Company's charter, and all ports and places (except the dominions of the Emperor of China) situated within those limits, as between the said United Kingdom, and all the last-mentioned ports and places, except as aforesaid.” And accordingly in the ensuing session of Parliament, this Circuitous Trade Act passed, this most important Act in the present discussion,—this Act, from which no fruit could ever be derived to any man, but which must remain nugatory and useless, a dead letter on the statute book, if this plantation bond be necessary for the trade of this country. But it was these Acts of the 53d and 54th of the King, which Mr. FERGUSON took to be the text-book of the Indian trader at this day; it was to them, and not to the Act of the 12 Car. 2, that he was to look for the rules by which he was to guide his traffick in this country, although Mr. FERGUSON had not contested, nor ever meant to contest, the applicability of the main principles of the Navigation Act, to that as to every other trade.

CHIEF JUSTICE. “ The Act of the 53d of the King expressly refers to that of the 12th Car. 2.”

ADVOCATE GENERAL. "Yes, my Lord, to the first section of the Act. And in all these cases, where the Navigation laws are mentioned in any of the statutes relating to the trade of India, the reference is to that great part of the Act." The first section of the Circuitous Trade Act was so very important, that he must trespass on their Lordships' time, by reading the whole of the enacting part of it.—After reciting the several sections of the 53^d Geo. 3, to which he (Mr. FERCUSSON) had already called their Lordships' attention, it proceeded thus: "And whereas it is expedient to make provision for the enabling the said Company, and all other His Majesty's subjects, to carry on such circuitous trade, also to carry on trade between all ports and places within the limits of the charter of the said Company, under certain restrictions and regulations; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the tenth day of April one thousand eight hundred and fourteen, it shall be lawful for the said Company, and also for any other of His Majesty's subjects, to trade (in ships navigated according to law, and proceeding upon any voyage from the United Kingdom to any ports or places within the limits of the charter of the said Company) to, and at any intermediate ports, places or countries, between the said United Kingdom and the limits of the charter of the said Company, situated in North and South America (other than and except any of His Majesty's

“ Colonies and Plantations in America,) and to
 “ and at the Island of Madeira, the Canaries
 “ and Cape de Verde Islands, the Island of Saint
 “ Helena, and the Cape of Good Hope; and for
 “ that purpose to discharge the whole or any part
 “ of the cargo of any such ship or vessel at any
 “ such intermediate ports, places or countries, as
 “ aforesaid; and in the prosecution of any such cir-
 “ cuitous voyage to take on board any other goods,
 “ wares and merchandize, which can be legally car-
 “ ried from any of such intermediate countries,
 “ ports or places, to any ports or places within the
 “ limits of the charter of the said Company; and
 “ in like manner to trade, in any such ship or
 “ vessel, in any voyage from any ports or places
 “ within the limits of the said Company’s charter
 “ as aforesaid to the United Kingdom, to and
 “ at any intermediate ports, places or countries
 “ between such limits and the said United King-
 “ dom, situated in North or South America
 “ (other than and except the Colonies or Planta-
 “ tions of His Majesty in America,) and at the
 “ Cape of Good Hope, or the Island of St. Helena.
 “ And it shall also be lawful for His Majesty’s
 “ subjects to carry on trade and traffick, in ships
 “ navigated according to law, directly and cir-
 “ cuitously, between all ports and places within the
 “ limits of the said Company’s charter, ex-
 “ cept the dominions of the Emperor of China,
 “ any thing contained in any charter of the said
 “ Company, or in any Act or Acts of Parliament
 “ to the contrary notwithstanding. Provided al-
 “ ways, that nothing herein contained shall ex-
 “ tend or be construed to extend to authorizing
 “ any of His Majesty’s subjects, other than the
 “ said Company, or persons properly licensed by

“ them, to export or import from or to any such
 “ countries, ports and places, within or without
 “ such limits, or to import into the United King-
 “ dom any Tea, or in any manner, to trade or
 “ traffick in Tea between any such ports or places
 “ aforesaid.”

See then, continued Mr. FERGUSSON, the predicament, in which a merchant would be placed by this Act, who had given bond in the terms of the Act of the 12 Car. 2. Say, that he adhered strictly to the conditions of his bond, and sought to acquit himself of its obligation, by landing his cargo in one of his Majesty's plantations in the West Indies or America, he would there find that he was excluded from those plantations by the terms of this Act, and that he must there be seized and confiscated for trading in contravention of its provisions! Did he on the other hand propose to trade in the terms of this Circuitous Trade Act, by carrying his cargo to a port in the United States of America, there the Navigation Act would lay hold of him, and he must be seized and confiscated for trading in contravention of his bond! And if he did not give a bond at all, we were still told, that he must be seized and confiscated in that case too! So that, do what he would, it was next to impossible that he should escape confiscation! How then were these contradictions to be reconciled? Here, contended Mr FERGUSSON, in this statute is the rule by which I am to go. Here I am enabled as a British subject, to clear out from any port of India with all goods whatsoever, Tea only excepted; (for it was not pretended, that Indigo and the other articles enumerated in the Act of Charles 2, could not be legally imported into Great Britain, and
 with

with respect to goods that was the only limitation ;) I may carry these goods to any foreign port in North or South America, or to any of the other places stated in the Act without the limits of the Company's charter ; and within those limits I am allowed to trade every where ;—I may go to the Persian Gulph ; I may trade with any of the Arab states in the Red Sea, or with any Indian foreign states,—to the eastward, I can traffick at any place (China excepted) from this to the Streights of Magellan,—and to the southward, I cannot define my bounds. Such are my privileges, under the Circuitous Trade Act. But how were those privileges to be enjoyed, if I am required to enter into this plantation bond, which had seemed dead and buried, until now that in the face of all these new immunities it had been called into existence. I carry *this charter* in my hand, said Mr. FERGUSON, I say, “ this is *my bond*.” I intend to go with my ship to the port of London, and I take on board such a cargo as can be lawfully imported into the United Kingdom, a cargo which may consist of every article, the growth and produce of this country ; but I intend to go to an intermediate port, not under the dominion of the King, for I am here permitted to land my goods, or such parts of them as I chuse, at any intermediate port in the course of my voyage, the King's plantations alone excepted. Yet how can I do so, if I have given this bond ? Either, said Mr. FERGUSON, this Act of the 54 of the King was a dead letter, passed for no purpose whatsoever, or no such bond could be exacted from the man, who tells you, “ I am going under this Act to Boston or Buenos-Ayres, to Bussorah or Bushire, with Indigo or Sugar, or any other article, which by its terms

I am privileged to carry thither." How then was it possible for me to enter into this bond, obliging myself not to carry the commodities in question, to the very places where by this Act I am entitled to take them? If I am still to give bond, this Act, he submitted, has given me nothing at all.

CHIEF JUSTICE. "The two laws are not merely different, but are in direct contradiction to each other. The Circuitous Trade Act excepts the Plantations of the King from the list of intermediate places, to which it permits individuals to trade."

It certainly, continued Mr. FERGUSSON, shewed an express contradiction. And without a new Act of Parliament, he took it, you were not at liberty to change the condition of the bond. The condition then must be a legal one; or if you admit it to be illegal, there was an end to the question. And how could the legality of that instrument be defended, which if you carry with you, and comply with its terms, your ship and cargo must be forfeited?

CHIEF JUSTICE. "I see, that, in the second section of this Circuitous Trade Act, there is a fresh provision, for subjecting the trade within the limits of the charter to the regulation of the Company, or rather for continuing their authority over it. The words are; 'Provided also, that all trade with all ports and places upon the continent of Asia, from the river Indus to the town of Malacca inclusive, or any Island under the government of the said Company, lying to the north of the equator, or the said Company's factory at Bencoolen and its dependencies, shall remain and continue, subject to all such

“ such regulations, provisions and restrictions, as
 “ shall from time to time be in force in relation to
 “ trade at any such ports and places, under the
 “ authority of any of the governments of the said
 “ Company at their several presidencies in India’.”

It was so, continued Mr. FERGUSSON, and so it had been ever since the year 1601. This power, he said, of regulating the trade within its own limits, which was vested in the Company by the charter of Elizabeth, remained with them to the present day, and was maintained untouched by this 2d Section of the 54th of the King. It was here that you saw Parliament legislating for the internal commerce of India, for the commerce between port and port in this country. But how did it legislate? For your guide in that commerce, you were here referred to such regulations, as might from time to time be passed in relation to it, by any of the governments of the Company at their several presidencies in India. These were the regulations here in force, and not this system of plantation bonds, which, after the lapse of a century and a half, had been conjured up, to throw the mercantile world into a state of confusion and dismay, unparalleled in the commercial history of India. Mr. FERGUSSON did hope however, that this most momentous question would this day be set at rest, and that the merchants of India would be informed by their Lordships’ decision, that they may lawfully and safely continue to carry on that extensive traffick with the foreign nations of Asia, which they have so long exercised to the eminent benefit of their country. The effect of that being found to be a law, which had received the sanction of another Court, would be nothing less than to spread ruin and misery over this populous and flourishing em-

ple. As to the mere giving of bonds, for those voyages which bonds could protect, that was a matter of very secondary moment; and Government had already done what rested with them, not certainly to fulfil the law, but to appease on this head the anxiety and alarm of individuals. That however, as he said, was a matter of comparatively very little moment; for, if the 18th and 19th Sections of the 12 Car. 2. be the law of this country, then was the trade of India at an end. With these observations, he should leave the case in their Lordships hands. If it were a case, in which the law contended for, would admit of but one plain construction, and that uncontradicted by any subsequent statute; they must no doubt have to perform the painful duty of enforcing its penalties according to the strict letter, however distressing might be the consequences. But if their Lordships should find, and he thought they had already found, that neither in its letter nor its spirit did the law afford any ground on which this seizure could be held to be legal, they would pronounce such a judgment, as would relieve the merchants of India from those alarms and apprehensions with which they were now agitated, and place their rights and interests on a sure and stable foundation.

The ADVOCATE GENERAL having concluded his argument, informed the Court, that he had one piece of evidence to submit to them, if their Lordships could receive it.—It was contained in the affidavit of a gentleman commanding one of the free traders now in this port, which stated, that no plantation bond had been entered into by him at home, although he now held a Certificaté

from

from the officers of His Majesty's customs, setting forth that all the forms required by law in such cases had been complied with.

Sir FRANCIS MACNAGHTEN. " If he had entered into a plantation bond, the certificate of his having complied with its conditions must have been returned within eighteen months. That limitation as to time alone struck me as a very strong circumstance in proof, that the bond was never intended to apply at all to the East Indies. Formerly, India voyages were very seldom completed within so short a period."

ADVOCATE GENERAL. " Very true, my Lord; that circumstance certainly affords an additional argument, as to the intention of the legislature. In this affidavit, it is stated, that the man made an application at the Custom-house in England, for the purpose of giving a plantation bond, as he had been accustomed to do in the West India trade, but that it was refused. In fact, the man was laughed at for a fool. They said, what have you to do with a plantation bond? you are going to the East Indies."

Mr. COMPTON then followed the Advocate General, on the same side of the question. Were it not, he said, for the very great importance of the subject, on which their Lordships were this day called to pronounce, he should not have felt himself warranted in further taking up the time of the Court, especially after the question had been so ably treated in the very luminous and comprehensive argument of his learned friend. Adverting, however, to the great interests at stake, and the important consequences

depending on their Lordships' decision, he trusted he should stand excused, for trespassing on their time with a few observations.

There was no doubt, as had been already observed by his learned friend, but that the great Navigation system of England, in its main and principal features, as it concerned the encouragement of British shipping, and the promoting the navigation of those ships by British seamen, did apply to this country, as well as to every other part of His Majesty's dominions; unless in so far as that application had been restrained by the positive enactments of the legislature. To this extent, he concurred in admitting, that the Navigation laws did extend to India, and that their provisions never had been relaxed except in some special cases, where to relax was absolutely necessary; as, for instance, with regard to the description of seamen employed in the trade between port and port in this country, --a trade, which must have stood still altogether, if Asiatic seamen had been excluded from carrying it on, in as much as there were no European seamen here to be found. With this and similar exceptions however, there could be no doubt, he apprehended, but that such part of the Navigation laws, as concerned the shipping to be employed in the trade of Great Britain and her foreign possessions, and the navigation of that shipping, did apply to India. But as to that part of the Navigation law, which related to matters of *revenue* and of *commerce*, he maintained, that, if it ever did apply, the machine was now completely broken up, that what constituted the polarity of all legislative provisions

on that head, had no longer any existence with reference to this country, and that the whole fabric was destroyed, perhaps because it was no longer necessary. Mr. Compton therefore said, he would not trouble their Lordships, by advertising further to that part of the Navigation laws, which had reference more particularly to the naval strength of the country; but should content himself with directing the attention of the Court to that branch of them, which more especially concerned the present discussion, viz. that which applied to the *commerce and revenue* of Great Britain.

The Act in question, that of the 12 Car. 2. c. 18, had been very properly described, as not merely a commercial, but a political Act; it was not however entirely political as contra-distinguished from commercial. Looking to the system which it established, as applicable to the relations subsisting between the mother country and her Plantations, and to the state of dependence in which these Plantations were placed at the time of passing this Act, the policy of the law, in seeking to protect and encrease the revenue, by bringing to England all the produce that could be obtained from the colonies, appeared to be sufficiently equitable. The Plantations of England had been in an infant state; people had emigrated from England for the purpose of settling there; and those countries had been brought into cultivation, at the expence of England and by means of her resources. The mother country therefore said, that her strength had been drained, for the support of these distant possessions; and when they had been reared from a state of infancy to one of full health

and vigour, she asserted the right of a parent over them, and required, in return for her protection, that they should send their surplus produce to England, in preference to any other part of the world, to pay a duty to the mother country, before it should pass into the hands of foreigners. This was the basis of the policy, on which these provisions of the Navigation Act were founded; that England should derive a revenue from all goods the produce of her colonies, and that other nations should only have such goods from the hands of England, after they had been landed on her shores, and she had levied her duties on them; for their Lordships would see, that it was particularly required by the 18th and 19th Sections of the Navigation Act, that the goods there enumerated should be "laid on shore," in some part of England, Ireland, or Wales, or in the town of Berwick-upon-Tweed. But with respect to her Indian possessions, England was very differently situated; on them she had expended none of her resources, nor otherwise contributed to bring them into cultivation. Looking to those charters, which, from so remote a period, had regulated the East India trade, in virtue of the King's prerogative, he would say, that this trade was not a discovery made for the first time after the restoration of Charles the 2d; that India was a rich and a highly cultivated country, and not like a new Plantation just sprung up, as it were, under a secret article of the treaty of alliance with Portugal. An extensive and lucrative trade had in fact subsisted between England and this country from the time of Elizabeth; and a body of men had been congregated, for the purpose of carrying it on, long before the Navigation Act was heard

of. This trade did not spring out of the cession of Bombay. And if it was not particularly referred to in the statute of the 12 Car. 2, it was impossible, he contended, to maintain, that this was because the legislature was not at that time aware of the importance and value of the trade itself. The charters shewed the contrary; they shewed, that at the time of passing the Navigation Act, India could neither have been unknown nor ignorantly passed by. And here he could not help adverting to a most extraordinary circumstance, that in the Parliamentary history of that period, in which all the debates of Parliament were given in detail, not one word was to be found, as to this great Navigation Act, to which so much importance had been subsequently attached, and to which we now impute all our national prosperity. The leading principles of this statute must, however, have been long before known and well considered, those principles having been embodied in a former Act passed in the time of the Commonwealth. And it was not to be said, that, when the legislature enacted this law, they did not contemplate the existence of that East India commerce, which, since the discovery of the passage by the Cape of Good Hope, had begun to pour those riches into England, which before that time had been wont to flow through the old channels into the other states of Europe. From the Act of 12 Car. 2. as it stood, there was no ground, he said, to contend, that these provisions contained in the 18th and 19th Sections, could have had any reference, or could have been intended by Parliament to apply to the trade of this country. If the legislature had meant to comprehend India within those regulations, which required all plantation produce

produce to be carried to a British port, it never could be supposed, but that they would have used that language, which would have distinctly referred to India,—language which was in fact resorted to whenever India was intended to be designated. The language then employed in speaking of the East Indies, seemed to be much the same as it was now. They were, then as now, described as “places” or “territories.” And strange it was that, if these Sections of the Navigation Act were intended to apply to the trade of India, those law officers of Charles who framed them, should not have used the same language, which they employed twelve months afterwards in drawing a new charter for the East India Company. But in the Act, there was nothing of the kind to be found.

The 1st Section, he said, he should pass over, as that was on all hands allowed to be every where in force. Adverting, again, to the 2d Section, which restricted persons born out of the King’s allegiance from following the occupation of merchants in any foreign possession of Great Britain, the application of such a rule to this country, he contended, would be so absurd and monstrous, that it hardly deserved notice at all, except for the purpose of shewing, that such application could never have been contemplated by the legislature. Its effect would have been, to deprive the natives of India of the right to trade in their own country; and it would have gone well nigh indeed to have rendered it impossible, to carry on any trade in this country at all.

The same clause then went on to direct, that
 “All Governors of the said lands, islands, plan-
 tations

" tations and territories, and all who shall here-
 " after be made Governors of the same, by his
 " Majesty, his heirs or successors, shall before
 " their entrance into their government, take a
 " solemn oath to do their utmost, that every the
 " afore-mentioned clauses shall be punctually and
 " *bonâ fide* observed." And here Mr. COMPTON
 begged to advert to the case, which had been
 referred to by the learned Recorder of Bombay,
 of a ship condemned at Madras, for having sailed
 without a register, and afterwards released on
 appeal to the King in Council, on the ground
 that no register was procurable, and therefore that
 its not having been procured was not an offence
 against the Act. The same doctrine, on which
 the decree of the Madras Court had been reversed,
 had also been laid down by Sir William Scott,
 viz. that the infringement of the law must be vol-
 untary, and not the result of "unavoidable ac-
 " dent or invincible necessity," otherwise that no
 condemnation can ensue. And such equitable
 considerations, Mr. COMPTON contended, had at
 all times been allowed to have essential weight in
 the decisions of the Admiralty Courts. Here then
 was a provision, directing that such Governors as
 might be "appointed by his Majesty," should
 take an oath to carry the foregoing clauses of the
 Navigation Act into effect; and by a subsequent
 section those Governors were required to take
 bond, that the enumerated commodities should not
 be carried any where but to a British port. If
 then there were no persons in India coming un-
 der that description, if there were no proper officers
 competent to take the prescribed document, from
 persons trading here in the commodities in ques-
 tion, how, even admitting that there existed trans-

tutions in this country, to which the terms of the Act would apply, how, he would ask, under such circumstances, could that be done which the Act required? Who were the persons designated here as Governors of Plantations? Certainly not the Governors of any of the British possessions in this country; for, since the Navigation Act had passed, there had not been one Governor appointed by his Majesty, either at Calcutta, Madras, or Bombay. Those who would enforce penalties under such a statute, Mr. COMPTON maintained, must bring themselves within its letter as well as within its spirit. It was necessary, that this bond should be given to the Governor of the Plantation;—*he* was the person expressly designated for that purpose by the Act, and, to bring him within the terms of that Act, he must be a Governor appointed by *His Majesty*. Was this then a mere slip or omission, that no Governor in this country had ever been called upon to take the oath here prescribed? Mr. COMPTON said, that it was not; for the Governor was not the only officer, but one of several whom the statutes of Navigation had specifically provided, for carrying this class of their enactments into effect, and yet not one of whom had ever existed in this country. Their Lordships knew, that the Act of the 33d of the King, c. 52, had always been considered as containing the great code of laws for regulating the affairs of India under the Company's government; and by referring to that Act, they would there see the express manner in which Governors in this country are to be appointed, that they are to be appointed by the Court of Directors, and that it is only in the event of that body neglecting to appoint a Governor for a certain space of time, that the right of nomination

is given to the crown. There were no King's Governors, therefore, Mr. COMPTON said, in this country, except the Governors of Ceylon and the Isle of France. Now, by the clause to which Mr. COMPTON had just been directing their Lordships' attention, they would observe, that all Governors appointed by the King were compelled to take a solemn oath, to see the preceding provisions of the Act carried into effect. And of so much importance was this oath considered to be, that another Act of Parliament was subsequently passed, for the purpose of defining and confirming its obligations. So severe and unpopular, it seemed, were some of the provisions of the Navigation Act considered, that a great demur arose in attempting to carry them into operation; and some of these gentlemen in the West Indies appeared to have thought it quite enough, if they gave effect to the first section of the statute, to which, by the terms of their oath, the duty of enforcement was restricted. Therefore this new Act was passed, in the 7th and 8th Gul. 3. c. 22, requiring all Governors and Commanders in Chief of any English Colonies or Plantations to take an oath, that they would enforce the *whole* of the provisions of the Navigation laws, and subjecting them to a penalty of a thousand pounds for each offence, and further to be indicted and removed from their respective governments, in the event of any of them neglecting to take the said oath, or to enforce any of the provisions to which it referred. And it might serve to shew the strictness, with which it was judged proper to construe the terms of this enactment, in regard to the description of persons to whom its penalties applied, when he stated to their Lordships, that a question at one time arose in

England, whether a Lieutenant Governor could be punished under this clause for a breach of its provisions, and that the law officers of the crown were of opinion, that he might indeed be indicted for a misdemeanor, but that he could not be made liable to the penalties of this statute, which applied only to Governors and Commanders in Chief, and that the party consequently escaped.—Then there followed another clause in the same Act; from the tenor of which it appeared, that so much difficulty had been found in dealing with the proprietary governments in North America, as to have rendered a specific enactment necessary, for subjecting to his Majesty's approval, future appointments of Governors to those settlements, in order that they might be considered thereafter as Governors *under the King*, and requiring them to take the same oaths which the law had prescribed for other Governors and Commanders in Chief in his Majesty's plantations. If then the argument, which had been urged by his learned friends on the other side, would apply in this case, namely, that the East India Company, holding their authority of the King, by delegating that authority to their Governors, made those Governors King's Governors, as well might it be contended, that these proprietary Governors in America, holding their appointments from proprietors who were subjects of the King, were in fact themselves already King's Governors, and that this declaration of the legislature therefore must have been utterly superfluous. But Mr. COMPTON contended, that there never had been any person in this, or any other Company's settlement in India, who came under the description of a King's Governor, as designated by the Act of the 22 Car, 2, competent to take these bonds, or who could

could legally do that, which it was alleged that the law required to be done. Nor, if this law had ever been contemplated to apply to this country, was it to be believed, that, while Parliament were exacting these oaths from the sturdy Penn, and the other refractory proprietors of the American Plantations, they would have left the execution of its enactments here wholly unprovided for. As the fact stood therefore, Mr. COMPTON maintained, that his clients could not have violated the law by omitting to give bond, because, even if that law applied to this country, the legislature had not furnished them with the means of complying with it.

But, as Mr. COMPTON had already said, the Governor was not the only officer designated for carrying into effect these provisions of the Navigation law; and there were other circumstances alluded to in the different Acts therewith connected, which sufficiently shewed, that those provisions were never intended to have reference to this country.

By the second Section of the Act of the 25 Car. 2. c. 7. it was enacted, that if any ship should take on board any of the commodities enumerated in the 18th and 19th Sections of the 12 Charles 2, without having previously given bond in the terms of that Act, there should be answered and paid to his Majesty, for so much of the said commodities as should be laden on such ship, certain rates of duties as thereafter specified, "to be levied, collected, and paid at such places, and to such Collectors and other officers, as shall be appointed in the respective Plantations, to collect, levy, and receive the

“ same, before the lading thereof, and under
 “ such penalties, both to the officers and upon
 “ the goods, as for non-payment of, or defraud-
 “ ing his Majesty of his customs in England.”
 Here then, their Lordships would perceive,
 there were certain Custom-house Officers to be
 appointed in the Plantations, for the purpose of
 collecting these subordinate duties, to which goods
 shipped in contravention of the Navigation Act
 were thus made liable; and that those duties
 were to be levied on the goods in question, for
 the King. Now, how was a provision like this
 to apply to this country, where no such offi-
 cers as here described had ever existed, and where,
 from the first commencement of the Company’s
 charter, there had not been paid any duty to the
 King, either on the inland or external trade,—
 where no duties ever had been collected in the
 King’s name, and where all the officers of the
 revenue were Company’s officers.

CHIEF JUSTICE. “ That seems a very singular
 “ provision, which you have just cited. It im-
 “ poses an additional duty for the omission of that,
 “ which if not done, the offending party, by the
 “ 12 Car. 2, must have incurred a total for-
 “ feiture.”

Mr. COMPTON. “ Yes, my Lord; and the
 “ inconvenience of such an anomaly was soon
 “ found.” People presumed, on the strength
 of this Act, that they might ship the enumerated
 goods without entering into bonds at all, at the
 hazard merely of having to pay these duties.
 And in consequence, the provisions of the sub-
 sequent Act, that of the 7th and 8th Gul. 3, became
 necessary. The preamble of the 10th Section
 of this Act set out with complaining of certain
 great

great frauds and abuses, in regard to the shipment of plantation goods, on counterfeit certificates and otherwise, alleged to have been committed by a class of persons, whom no one, he was sure, in the present day, would suspect of such practices, viz. by certain *Scotchmen* and others engaged in the Plantation trade. Among the remedies proposed for these evils, their Lordships would find, that, wherever the enactments of the Navigation Act now in question were to be enforced, particular functionaries were provided for giving effect to them. And here accordingly, another personage presented himself, whom we had never heard of in this country,—a Naval Officer; for, by the Act of the 15 Car. 2, the Governors of Plantations had been authorized to appoint persons under that denomination in their several Plantations respectively, for the purpose of preventing frauds in breach of the Act of the 12 Car. 2; and this statute of William further required, that all persons so appointed, should give security for the true and faithful performance of their duty. Again, by the 11th Section of the Act of the 7 and 8 Geo. 3, c. 22, the Lords of the Treasury and Commissioners of the Customs in England, were authorised to appoint such Officers of the Customs as they might deem necessary, in any city, town, river, &c. in the Plantations, for the purpose of carrying into operation this particular branch of the Navigation system. Here in India, he need hardly say, that no such persons had ever been appointed.

But nothing could more effectually shew the absurdity of supposing, that these legislative enactments were intended to apply to this country, than the nature of a provision contained in the
Act

Act of the 7 and 8 Gul. 3, to which he had been alluding, namely, that all persons who might thereafter be named as sureties in any Plantation bonds, should be persons of *known residence and ability* in the said Plantations. Was it to be said then, that a poor wretch, who wished to carry a little rice in a dhoney from hence to Coringa, must before shipment find two responsible persons as securities, and that in the immense sum of 1,000£. each, for its due delivery? It would be as easy, Mr. COMPTON believed, for a person of that description to find the longitude.

Notwithstanding all the precautions however which had been enumerated, resistance and frauds in counteraction of the law still continued to prevail in the West Indies; to overcome which, and to settle the various disputes which had arisen in attempting to enforce this branch of our Navigation system, Courts of Admiralty were established, and Attornies General appointed in the Plantations, soon after this Act of Gul. 3. Now it was unnecessary for Mr. COMPTON to inform their Lordships, that Courts of Admiralty had been only very recently instituted in this country, and that no such thing as an Attorney General had ever existed here, until the last Act of the legislature, continuing, under certain modifications, the exclusive trade to the Company, (the Act of the 53d of the King,) which had clothed the Advocate General with the functions of Attorney General for certain special purposes.

Thus then it appeared, that we had in India, neither Governors, Naval Officers, Collectors of Customs, nor, till lately, Admiralty Courts or Attornies General,—in short, not one of the offi-

ers necessary or competent to carry the provisions of the Navigation law into effect. And from these circumstances alone therefore, he said, there was the strongest ground to infer, that the legislature never had contemplated the extension of the clauses in question to this country.

But great stress had been laid on the importance of these clauses of the Navigation Act, as connected with the general policy, which required all British colonial produce to be carried to the mother country. Now, in this respect, Mr. COMPTON would observe, that the clauses in question, were merely subsidiary to the 4th Section of the Act, being intended to enforce a compliance with the provision of that section, which enacted, that all goods of foreign growth or manufacture which might be imported into England, should be brought thither directly from the places of their growth or manufacture only, and not circuitously or indirectly. And this policy might be applicable enough to articles of the growth or manufacture of the West India colonies, because those colonies, as he had said, were considered as the children of the parent state; and the very reason why Ireland was afterwards excluded from trading with them, was one which illustrated the policy, but which he fancied would hardly apply in the present day, viz. that she sent comparatively few colonists to the Plantations, while many more people emigrated from England, and England consequently, it was contended, had a preferable title to the rents arising from the colonial trade. To the West Indies accordingly, this provision of the Navigation Act was specifically intended to apply. Whenever the legislature meant to speak of India or Indian produce, its language

language was totally distinct from that which it employed with reference to the West Indies. The words and phrases resorted to in the two cases, were altogether different; and nothing could be more distinct than the two systems of policy. Accordingly, by the 13th Section of this very Act of 12 Car. 2, East India commodities were specially excepted from the operation of that restriction of the law, which required foreign goods to be imported only from the places of their growth; and it was allowed to carry them freely, from any ports to the eastward of the Cape where such articles are usually laden. It had been customary to call our East India trade a monopoly, whereas that term would apply with much more propriety to our West India system; for that in fact was a system of close monopoly, occasionally indeed relaxed from necessity in times of war, but always enforced again, and not a foreigner admitted, the moment the war was over. The policies of the two systems were not only different, but completely opposed to each other. In the one case, the monopoly still remained entire; while in the other, it had been done away, and the whole machine broken up. By the Act of the 37th of the King, c. 117, the ships of foreign nations generally, in amity with his Majesty, had been permitted to trade with the British possessions in the East Indies, subject, first, to the provisions of such treaties as the King might enter into with those nations respectively; and secondly, to such regulations as the Directors of the East India Company might think fit to frame, for carrying on such foreign trade. If then the East India Company did not hold by law any controuling power over the internal trade of this country, if they must give bond

bond to their own Governors that they will not contravene the Navigation laws, with what consistency could they possess or exercise this restrictive authority, which the Act of the 37th of the King had expressly given them, over the trade by that Act thrown open to foreign nations. The meaning of this enactment was clearly this; that the legislature had granted to the Company certain exclusive privileges, and among others the exclusive privilege of freely trading between port and port within their limits; and the legislature thought therefore, and properly thought, that it could not throw open this trade at the same time to foreigners, except in as far as the Company might think fit to consent to such an encroachment. The Company was accordingly directed by this statute, to make regulations for the carrying on of such foreign trade. And from this, as well as from the whole system established by the Company's charters, even from their very commencement, it was clear, that every thing relating to the internal trade of India was intended to be left entirely to the Company's regulation; a state of things, which never could have had existence, if that close interest which takes place between a colony properly so called, and the parent state, had ever subsisted in the relation between India and Great Britain.

As to the distinction between the terms "Plantations and Colonies" and the larger expressions made use of in the 1st Section of the Navigation Act, that point had been already most ably discussed, and was perhaps hardly worth further debate. All the Acts relating to our Navigation

system were clear, in distinguishing those provisions which were intended to be limited to the Plantations, from those which were of more general application, and in using the close or the loose expressions, according as the one or the other branch of the system might be in view. When he found then the legislature uniformly employing these words of limitation in this class of enactments, it was quite impossible, he conceived, for any one to maintain, that the intent of the enactments was still as general as if no such limitation had been introduced. The 18th and 19th Sections of the Navigation Act also differed, he conceived, from the preceding clauses, in extending only to the English Plantations which *then* belonged to the nation, and not to those which might afterwards be obtained. It had been suggested by his learned friends on the other side, that, at the time when this Act was passed, the cession of Bombay was contemplated, and that Parliament meant therefore to embrace that settlement within its provisions. But it appeared to Mr. COMPTON altogether indecorous to presume, that Parliament should have set about to legislate for a distant territory of that description, and one at that time so little known in England, before even the treaty was known to have been made which gave it to the British crown;—this was an absurdity, not to be imputed to the legislature. With respect again to the argument founded on the special exception of Tangier from the operation of the Navigation laws, in the Act of the 22d and 23d Car. 2; that exception obviously proceeded on the principle, that Tangier was not to be parted with in any way, but was to remain in the possession of the crown, and that

it

it might be proper therefore to guard against the possibility of its being considered a Plantation ; whereas Bombay had been ceded to the East India Company by charter in 1669, before the Act of the 22d and 23d Car. 2, and therefore came within the general system by charter established for the regulation of all trade to the eastward of the Cape. There was not therefore that occasion for a special exception with regard to Bombay, which existed with respect to Tangier.

As to the question, whether this country be or be not a Plantation, common sense alone was quite sufficient to determine it at once, unless any legislative definition of the word could be shewn, in which India was distinctly comprehended. So far was this from being the case, that the legislature had never in any one instance spoken of India or any part of it as a Colony or Plantation. Mr. Compton had heard indeed of a very ingenious suggestion which had lately come from Bombay, that Canton being a British Factory, might possibly be a British Plantation, within the meaning of the Navigation Act ! And certainly one might almost argue as gravely, that Canton, or even the empire of China, was a British Plantation, as that the Company's possessions in India came under that description. There was very little more planting or colonization by Englishmen here, he believed, than there was there. And the observation of Burke, with respect to the birds of prey and passage, which take their flight from hence to England with every monsoon, would still apply pretty correctly, he believed, even at this day, to the

relations of Englishmen with this country. If their Lordships looked again to a definition which had been already cited from one of these very Acts of Charles, a definition made at the time when the word "Plantation" first came into use as a legislative phrase, they would find, that what constituted a Plantation, was its being "peopled by his Majesty's subjects of his kingdom of England." And here Mr. COMPTON would refer their Lordships, to an opinion stated to have been given by the King's Attorney General so far back as the year 1689, with respect to interlopers in India; which shewed, that all resort of English subjects to this country, unless licensed by the East India Company, was as strictly prohibited at that time as it is now. Who then, Mr. COMPTON asked, in the face of these prohibitions, was to come here to colonize? Let reference next be had to those plantation tenures, by which the planters in our American settlements held their lands of the crown; and it would be found, that the actual culture and planting of those lands was considered to be a necessary condition of every grant; and that, if the party failed to cultivate the lands allotted to him, the grant was frequently resumed by the States. How then, at the time of passing the Navigation Act, could a system with such conditions attached to it, or the language of that system, possibly be applied to this country, consistently either with fact, with reason, or with etymology! Nor had any thing since that time occurred so to change the condition of India, as to bring it within the operation of laws, which in the year 1660 were only applicable

to the colonies of the British crown then in existence.

Mr. COMPTON hitherto had endeavoured to argue, that, from a view of the Act of Navigation itself, of the circumstances under which it was passed, of the terms used in it, and of the provisions afterwards made to enforce it, it was impossible to contend, that the clauses of the Act this day in question, ever could have applied or been meant to apply to this country. But supposing, for the sake of argument, that the whole of the Navigation law did originally extend to India, he maintained, that a subsequent code of laws had since arisen, and had been gradually worked into a system for the express regulation of the commerce of this country, which was wholly incompatible with the enactments of the Navigation statutes; that, whatever therefore might have been the case before, it was utterly impossible to consider the 18th and 19th Sections of the Act of the 12 Car. 2, as applying to this country after the Act of the 9th and 10th of William. It had been said, that the great object of the legislature in requiring the whole growth and produce of the colonies to be brought to Great Britain, was that it might pay a revenue to the crown, before passing into the hands of foreigners. Now, by this Act of 9 and 10 Gul. 3, c. 44, (the first Act of Parliament which sanctioned the exclusive trade of the East India Company,) the legislature did take care to do substantially, in as far as concerned the East India trade, that which was contemplated by these provisions of the Navigation Act, in respect of the colonies. In doing this, the legislature

gift and had kept the Navigation Act entirely out of view; and, without the least reference or allusion to that statute, had taken care completely to provide for and to protect the interests of the mother country, in regard to the revenues which she might be entitled to derive from the produce of her East India territories. In making these provisions, the Parliament never could have overlooked the existence of the Navigation Act, if it had contemplated that Act as applicable to India; for, only two years before, the whole Navigation system had been under review in the Act of the 7th and 8th of William, in which all the earlier laws were recited, and which was passed for the express purpose of extending and enforcing their operation. It was plain, therefore, that the legislature never did contemplate any such application of the laws in question to India. They were at this time about to lease out to a new Company, those exclusive privileges of trade, which another association had for many years before enjoyed under the charters of the crown; and the question was, what was to be done to preserve the interests of the crown entire, under this new grant? Were the Company to have the full benefit of this exclusive trade, and was the country at the same time to be deprived of that revenue, which she was accustomed to derive from the commerce of individuals with her other foreign possessions? By no means. Provisions were not only made, for protecting the revenues from any injury, but they were carried a great deal further, than they had ever been by the plantation laws. The Company and those trading under them were required, not to enter into

these bonds for carrying merely the particular articles enumerated to a British port, but to make entries and affirmations on oath of all goods shipped by them in England in pursuance of such exclusive trade, and then to give security to the Commissioners of the Customs in England, under the direction (if any difficulty or dispute should arise) of the Barons of the Exchequer, that *all* goods shipped to the eastward of the Cape of Good Hope, should be brought (without breaking bulk) to some port of England or Wales, and there be put on land. Nor was this all. In order that the amount of the revenue to be levied might be exactly ascertained, it was further required, that *all* the goods in question should be sold by inch of candle. If then the object of these enactments of the 12 Car. 2, were that which it was alleged to be, viz. to enable the crown to levy a duty on the produce of its foreign possessions, was not that object here provided for in the fullest extent? And yet this, for what purpose, he would ask, was this same Company to enter into these plantation bonds, to take the specific goods therein enumerated to an English port? Let us suppose, he said, that such bonds were to be required from the East India Company, that, by some man taking a crotchet like this into his head about the 18th and 19th Sections of the Navigation Act, the provisions of those Sections should be construed to apply to the Company's trade, what would be the consequence? Either it must follow, that the Company would be at liberty to carry all the articles of commerce not enumerated in the plantation bond to any other than a British port, and the revenue of the mother country would consequently be injured, instead of benefited, by the precaution;

or we must suppose this monstrous absurdity, that the law still exacted those plantation bonds of the Company, after they had already given bond to a much larger extent, and including all articles of commerce whatsoever. And until the Act of the 33d of the King, Mr. COMPTON requested their Lordships to observe, that all British ships engaged in the East India trade were Company's ships: for, by that Act, for the first time, the private ships of this country were permitted to be licensed by the Company, for carrying on the trade between India and Great Britain.

The provisions of this Act of William were on trial found to be wholly ineffectual; and the Act of the 6 Ann. c. 3, was therefore passed, which specified the amount of the security to be given by the Company, and the form of bond to be entered into by them. By this bond, they were required to carry all goods shipped by them to some port of Great Britain, without breaking bulk, under a fixed penalty of £. Stg. 2,500 for every hundred tons. If this Act of Parliament therefore meant any thing, its meaning was wholly inconsistent with the use of plantation bonds in the Company's trade; for the legislature never could have contemplated or intended, that the Company should enter into both bonds. And unless the Company were bound, under these sections of the Navigation Act, to give bond or to produce a certificate of bond having been given; previous to their shipping any of the enumerated commodities, it was impossible to argue, that such an obligation could attach to any individual trading under the Company's license.

Then there was another remarkable distinction between the two systems. It would be seen, that

All forfeitures which might be incurred under the provisions of the Navigation Act, were to go in equal portions, one moiety to the King, and the other to the informer; whereas the forfeitures incurred by individuals for trading in breach of any of the statutes relating to the East Indies, were allotted, not to the King, but to the Company, who had three-fourths, leaving one-fourth to the informer.

On this footing, the laws for regulating the exclusive trade of the Company to the East Indies, continued pretty nearly undisturbed, until the Act of the 33d of the King; all ships coming to India, whether Company's or private ships (if indeed any of the latter description came at all,) entering into the security bonds required by the Act of Anne, previous to their departure from England. By the 33d of the King, the Company were authorized to license ships to proceed from this country to England. More than twenty years had now elapsed since that enactment; and many hundred vessels had during that time gone home from India, in virtue of its provisions. Yet had there, Mr. COMPTON would ask, occurred any single instance, in which the Officers of the Customs in England had attempted to interfere with, or detain any of these ships, for a violation of the plantation laws? Had there ever been an instance, in which a plantation bond had been given, or in which a forfeiture had been decreed for the want of it? He would venture to say, that there had not. By all that we know from usage therefore, it was evident, that the plantation law was not considered at home to be applicable to India. And, although that fact might not perhaps be

Material, if the application of the law were perfectly clear; yet it was of great importance to be considered, when a new construction of the law was contended for. Was it possible then, he would ask, to conceive, that, ever since the 33d of the King, some hundred ships had been carrying on a trade contrary to law between India and Great Britain, and yet that the illegality of that trade should never once have been noticed by any of those persons at home, whose business it was to know the laws applicable to trade, who had a strong interest in detecting breaches of them, and who were not in general wanting either in the intelligence or vigilance necessary for obtaining that end. The natural inference was, that by those persons who ought best to understand the law relative to the plantation trade, that law was not considered to apply to ships coming from the East Indies.

But even if it were otherwise, even supposing, that plantation bonds could or ought to have been taken from ships sailing from this country after the 33d of Geo. 3, what could be said in answer to the arguments which his learned friend had urged on the Acts of the 53d and 54th of the King? Those statutes had opened the trade of India to all his Majesty's subjects. But, if both the Navigation Act and the Acts of the 53d and 54th of the King, were to hold good at the same time, how, he would ask, was the merchant now to walk? No man could now go to sea, without subjecting himself to forfeiture. Here the merchant was permitted to land at any of the intermediate ports between this country and Europe,

except

except only His Majesty's Plantations in America, the whole or any part of a cargo, which might consist of any commodities whatsoever that could be legally imported into Great Britain. This the law permitted, and that was as much as if it had sanctioned or commanded it. But then, if the construction of the Navigation Act which had been contended for, was not to be controverted, no one could carry any of the articles there enumerated, except to one of His Majesty's Plantations, or to some port of England or Wales, or the town of Berwick-upon-Tweed, without forfeiting his ship and cargo. Never then were merchants so placed between the horns of a dilemma, as they were by the argument of his learned friends on the other side. He would maintain it to be utterly impossible, that, consistently with the provisions of the 53d of the King and the Circuitous Trade Act, these laws can now stand in application to this country; admitting even, as he had said, for the sake of argument, that they ever did so apply.

CHIEF JUSTICE. "The Act of the 53d of the King grants to his Majesty's subjects, the whole trade in, to, and from the East Indies, to be carried on in common with the East India Company, and as amply as the said Company could trade, subject only to the several restrictions, conditions and limitations, in this Act contained." There is no other restriction, nor any reference to the Navigation Act. It cannot therefore be argued, that private traders are bound by rules without the terms of the Act of the 53d of the King, which do not apply to the Company."

Mr. COMPTON went on to observe; that the same system which had been established for regulating the Company's trade with this country, was equally in force in regard to their trade with China, where we have no territorial possessions. It must be well known to their Lordships, that the offence of breaking bulk in the Channel, was a constant subject of prosecution at home, against the Commanders and Officers of the Company's ships engaged in the China trade. Previously to the Act of the 53d of the King, the whole of the East India commerce of Great Britain indeed had been strictly confined to the port of London. All articles imported either by the East India Company or by individuals, whether from this country, from China, or from any other port or place within the limits of the Company's exclusive trade, were required to be carried to the port of London only. How then, Mr. COMPTON would ask, was this restriction to be reconciled with the terms of the plantation bond, which (excluding Ireland, the ports of which had been since opened for the East India trade by the 53d of the King) allowed a free importation of the enumerated commodities, into any port of England or Wales, or the town of Berwick-upon-Tweed? The two systems therefore were, in almost every essential point, utterly inconsistent with each other, and could not possibly stand together. In legislating for this country, the parent state had delegated its sovereign authority to the East India Company, and given up to that Company the trade and revenues of its possessions in the east. It had done this for certain considera-

tions;

tions ; one of the principal of which was until very lately, the importation by the Company into London, of all commodities shipped by them at any port within their limits, in order that those commodities might pay a duty to the crown. This, as had been already urged, was the safeguard which the legislature had thought fit to interpose for the protection of the King's revenues, in the case of the trade of this Company, and of those licensed by them. And accordingly, the revenues thus raised by duties levied on East India commodities, constituted no inconsiderable part of the annual resources now chiefly relied on for the support of the parent state.

Mr. COMPTON had now endeavoured to shew to their Lordships, that, in the first place, consistently with the terms of those clauses of the Navigation Act under which this vessel had been libelled, with the purposes to which the provisions of those clauses were immediately directed, and with the measures afterwards adopted by the legislature for enforcing them, those clauses never did, nor could have extended to this country ; and secondly, that, admitting them to have so extended, the subsequent enactments of the legislature with respect to the East India Company and the trade of Great Britain with the East Indies, were of such a nature, that it was clear, the two systems could not exist together,—that the latter laws therefore must be considered as contravening the former, especially as the interests of the parent state would still be sufficiently protected, in those points which the clauses in question had been particularly intended to guard,—that, in fine, these provisions of the Navigation law, if they ever applied, had been
abrogated

abrogated in as far as concerned the East Indies, by later Acts of Parliament. If however, notwithstanding all that had been urged, their Lordships should still find themselves oppressed with any difficulty, in framing their decision on the general question of law now before them, the principles laid down by Sir William Scott, with reference to all questions of forfeiture under the laws of navigation, would no doubt operate on their Lordships' minds, in applying the law to the case under consideration. And if their Lordships' should find, that, in shipping the articles enumerated in the libel, without having previously given a plantation bond, the persons charged with this offence, were merely doing that which they believed they had a right to do,—that they had not committed a wilful breach of the law,—that no plantation bond could here be given to a King's Governor,—and that a compliance in that respect with the law was therefore impracticable,—that, in fine, all usage for an hundred and sixty years back was in favor of the conduct of his clients,—then their Lordships' would say, that, even admitting the strict letter of the law to be against the master and owner of the *Dispatch*, they had not violated its spirit, and their Lordships' would not therefore visit on the individuals in question, the consequences of an act which did not depend on themselves only, nor treat those as offenders, who, under the worst view of the case, must be considered merely, to use the words of Sir William Scott, as “erring innocently, and in point of immaterial form only.”

* See case of the *Eleanor*, 1 Edwards' Reports, p. 148.
Whatever

Whatever practical mischief might be attributed to a breach of these clauses, none such could have ensued in the present case, because the vessel was going to Madras and Bombay, to which ports it was on all hands admitted, that she could legally have proceeded if bond had been given. The parties, moreover, could not in point of fact have acted otherwise than they had done; for it was only since the clearing out of this vessel in prosecution of her voyage, that the Governor General had thought fit to say, that he would receive these plantation bonds from individuals, to whose protection they might be thought necessary. The *Dispatch* therefore had only done, what every other vessel in the same situation must of necessity have done. Their Lordships' therefore would not say, that there were those ingredients in the present case, which would be necessary to constitute a wilful violation of the law, or would preclude them from extending an equitable consideration towards this Impugnant. The leaning evinced by Sir William Scott, in the case of the *Betty Cathcart*, 1 Robinson's Reports, p. 220, appeared to Mr. COMPTON peculiarly applicable to the circumstances of the case now under discussion. On that occasion, inadverting to the strictness, with which the revenue and navigation laws were to be construed and applied, that great Judge observed; "*At the same time it is not to be said, that they are not subject to all considerations of rational equity. Cases of unavoidable accident, invincible necessity or the like, where the party could not act otherwise than he did, or has acted at least for the best, must be considered in this*

“ system of laws, just as in other systems.” Mr. COMPTON therefore submitted to their Lordships, that this case of the *Dispatch* came precisely within the considerations here pointed out by Sir Wm. Scott; and looking, as *he* had done, to the motives under which the parties had acted, and the authority by which their conduct had been directed, he trusted that, as in the case of the *Betty Cathcart*, their Lordships would “ think
 “ it reasonable to be content with less circumspec-
 “ tion and less regularity, than might be required
 “ from other parties and under other circumstan-
 “ ces.” On all these grounds therefore, Mr. COMPTON concluded by humbly claiming the judgment of their Lordships, in favor of the master and owner of this vessel.

Here the argument in this case closed; and, after a short deliberation, the Court proceeded to give judgment, the several Judges delivering their opinions *seriatim*.

The Honorable the CHIEF JUSTICE began by observing, that this was a case of the very greatest magnitude and importance to the political and commercial interests of Great Britain, and no less so, when considered with reference to the political and commercial state of this country. If therefore, after the full and able manner in which it had this day been discussed, any further consideration which the Court could give to it, would have enabled them with more certainty to form their opinions, they would have been happy to have taken an opportunity to reconsider the subject. But, ever since doubts on this question had first been started, their attention had been particu-

larly called to it : he and his learned brethren had several times given their united consideration to the subject ; and for the last two or three days, he might say, that, either separately or in conference, they had had it almost incessantly before them : and now, having heard all that could be urged on the subject, and having all come to the same conclusion, if they were to suspend giving judgment, the further delay, though it might have more parade of deliberation, would not be productive of any real benefit, by bringing the subject more distinctly before their minds. If his Lordship had thought indeed, that, by waiting till tomorrow or the next day, with all the other business which now occupied the Court, the Judges would have been enabled to go through again all the statutes which had been referred to in this case, act by act, and clause by clause, and to repulse all the opinions and decisions in any way bearing on the point at issue, he might have been inclined to suspend giving judgment for one or two days. But that time, it was obvious, would be insufficient for such a purpose, with the other necessary avocations of the Court : and unless a much longer time were to be taken, than under present circumstances would be desirable for the public interests of the country, they would not in reality be enabled to bring in aid of their judgment, more information on the question at issue, than they already possessed.

As to the ultimate decision of the Court, indeed, on the question of forfeiture, no difference, he apprehended, could possibly be made in their opinions, by any deliberation which it was in their power to bestow. On that head, there could be

no doubt or hesitation:—for, to suppose a forfeiture in a case like this,—the case of a person, who had merely not done that, which he had not wilfully or fraudulently omitted, but was of himself physically unable to do, and could only do in cooperation with a certain public officer, who had no official existence in this place,—and which act had never been done by any other person, or required to be done, for an hundred and fifty years, although Parliament, with a full knowledge of this general omission, had repeatedly legislated upon the subject during that interval, without making any provision for the purpose: to suppose a forfeiture incurred under those circumstances, would be such manifest injustice, as he believed was without example among cases of forfeiture. The very idea of penalty and confiscation attaching in any case implies, that there has been some wilful and fraudulent, or, at all events, some voluntary, act done or omitted by the individual in breach of the law. But to decree a forfeiture against a man, for the omission of that, which did not depend on his act only, but which it was necessary that a certain public officer should concur with him in doing, to decree such a forfeiture in this country, where no such concurring party existed, where, since the first charter granted to the East India Company, no King's Governor, nor any of the other individuals mentioned in the different Acts of Parliament for carrying these provisions of the law into effect, had ever been appointed, and where the legislature itself, having the subject matter continually before them, never appeared during all that time to have contemplated the necessity of any person doing the act, and

had

had not provided the means for doing the act, which he is charged with having omitted; to decree a forfeiture against this person, for not having executed and delivered a certain bond to a certain officer, where no such officer was to be found competent to accept it; would, as his Lordship had already observed, stand alone, he believed, among cases of forfeiture. Independant therefore altogether of the general question of law, there was ample ground for the Court to decide against a forfeiture in the case now before them. The argument on this head became still stronger in his Lordship's judgment, when it was taken into account, that not only during all that long period to which he had been referring, when the subject of the trade of this country had been repeatedly before the legislature, and it must have been notorious, that, as far as concerned plantation bonds, the provisions of the Navigation Act had never been executed here, that not only the legislature had never taken any measures, for carrying it into operation in this country, but that, in the same interval, express opportunities had offered, for bringing the matter into discussion, with respect to other parts of the British empire. For it was a striking circumstance, that this very enactment of the 12 Car. 2. had been frequently during that time enforced by the legislature, in other parts of his Majesty's dominions abroad, namely, the West India and American colonies; while it had been suffered by them to continue a dead letter in the East Indies. This was a strong confirmation, in his Lordship's mind, that the clause in question never was, nor was intended to be applicable to this country.

This case, however, having been argued principally upon the general construction of the Navigation law, as extending the colonial bonding system to the growth, produce, and manufacture of British India, he would not decline stating the opinion which he had formed upon that question.

The Act of Navigation, speaking generally, was one certainly, which every lover of his country had learned to revere, and which no British judge ought to touch, but with every possible degree of respect and caution. Whether it now be or be not the very best system of law for regulating the commerce of Great Britain, (the negative of which had been asserted in argument,) was not for the consideration of this Court; that was a matter for the legislature to decide. But his Lordship believed, that when first passed, it did effectually answer the purposes, for which it was then intended; and that the system thereby established had proved of the greatest service to the nation, in the time of the Commonwealth and after the restoration, and had produced the effect contemplated, of transferring the carrying trade from the Dutch to the English, and of speedily raising the naval power of England, first to a parity with, and afterwards above that of her neighbour, who before had stood at the head of the maritime world, were facts which no one would pretend to deny. There could not therefore be a doubt, but that the general policy of the Act was well founded in experience, nor that it had been, in point of fact, the policy of Great Britain all along, to support its provisions to a certain extent, and that it must therefore be the duty of every Court

Court of Justice, to support those provisions to the extent intended by the legislature. And although, with reference to the trade of this country, great alterations had certainly been made in those parts of the Act concerning the built and navigation of British ships, which were considered here to apply; yet its principles, though wisely extended, were in the main preserved, and to this day were supposed to constitute the commercial pillars of our naval power.

There were two distinct classes of provisions embraced by the Act of Navigation. One of these was chiefly comprized in the first clause of the Act, and was peculiarly calculated to promote the naval strength of the country. This it sought to do, by establishing certain regulations for the carrying on of British trade in British ships, manned by British seamen. It required, that all goods imported or exported to or from England, or any of her dependencies, should be so imported and exported, only in ships British-owned and British-built, and with crews consisting of three-fourths British seamen. This was the main provision of the statute; and its object being of a general nature, having in view the increase of the naval power of England in all parts of the world where she had dominion, its operation was extended, by the terms of this and the subsidiary clauses of the Act, to all "lands, " islands, plantations and territories, in Asia, " Africa or America, to his Majesty belonging, " or which might thereafter belong unto, or be in " the possession of his Majesty." There was another set of provisions, which were of a secondary nature, intended for regulating the trade of those

Plantations

Plantations, which were settled or planted by England at that time. This object was provided for, by the 18th and 19th Sections of the Act, which required, that certain enumerated commodities, of the growth, production, or manufacture of any such *English Plantations*, should not be shipped or carried from any such *Plantations*, except to some other *English Plantation*, or to the mother country, and that bond to that effect should in all cases be given previous to shipment. With respect to the last mentioned object, the phrase used by the legislature, his Lordship observed, was materially altered; they no longer spoke in large and general terms, as they had done in the first clause, when speaking of the transfer of goods or produce generally in English ships and by English seamen between England and all the territories which belonged or might thereafter belong to or be in possession of the crown; but first they spoke of the shipment of particular articles, such as sugar, tobacco, cotton wool, &c. all of them notoriously the chief products of the West India islands and of our other American colonies at that time; next they provided, that those particular articles should not be "shipped, carried, conveyed, or transported from any of the said *English Plantations*, to any land, island, territory, dominion, port, or place whatsoever," (thus contrasting the peculiar description of "*English Plantations*," with the larger terms employed in the first clauses of the Act,) "other than to such other *English Plantations* as do belong to His Majesty, his heirs and successors, or to the kingdom of England, &c." thus again distinguishing by the alteration of phrase, between the then *English Plantations* (whose produce was to be confined to the mother

mother country,) and the future as well as present territories of the crown, which were embraced by the British navigation system as to ships and seamen. There was a marked distinction, throughout the different sets of provisions. In the first clause with respect to British shipping and seamen, it was sufficient, that any place should be a dominion or territory belonging to or in the possession of the King, to bring that place within its provisions, and to make it necessary, that all navigation there carried on, should be carried on in English ships only, owned and manned by English subjects. But, in legislating with respect to the shipment of the particular goods specified in the 18th and 19th Sections of the Act, it was expressed, and became therefore a necessary ingredient to bring them within the enactment, that such goods should be of the growth, production, or manufacture of some "*English Plantation*;" thus changing the phrase, and contrasting it in that very clause with the larger terms, (lands, islands, territories, &c.) used in the first part of the Act. When his Lordship first had occasion to attend to these clauses, the word "*manufacture*," as applied to articles of colonial commerce, had struck him as somewhat remarkable. But, in truth, the manufacture there alluded to was merely that immediate change, which some of these subjects of growth are made to undergo, in order to bring them to the state in which they are usually exported:—in preparing several of these articles for the market, (sugar and indigo, for instance,) they underwent a process, which might properly enough be termed a manufacture. Some therefore of the commodities enumerated, were of the growth merely,

while

while others might be said to be of the growth and manufacture of the English Plantations in question.

Here then, the first question occurring in this case was, what was meant by the term "*English Plantation*?" That was a point, which could not naturally be determined by reference to law books merely; for such a term was hardly capable in its nature of strict legal definition, applicable to all times and circumstances, founded as it was in history, commerce and policy; nor was any such strict legal definition to be found, on which the judges could rely, in deciding on the meaning of those words. It was therefore necessary to resort to usage, and particularly to the usage of Parliament, in regard to the application of the term in question. And both in the language of Parliament, and in common language, at that time when the Navigation Act was passed, his Lordship would say, that the meaning attached to this term was notorious, and restricted its application to places settled and planted by Englishmen, for the purpose of raising produce from the land. Was that the state and condition of Hindostan? Could any person venture to say, that that was a true description of this country, when, on the contrary, it was peopled and cultivated by its own original, distinct population, and Englishmen were actually prohibited from settling and planting it? But the provisions of these clauses were further limited in their terms, to the produce of such English Plantations as "do belong to his Majesty," omitting the prospective words, which occurred in all the 1st Section. Strictly speaking, therefore, they would be confined to such Plan-

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tations as belonged to his Majesty at the time when the Act was passed, which was not the case with this country. So that, in either point of view, the British possessions in this country were entirely out of the view of the legislature, at the time when the Act of Navigation was passed. When then did Hindostan, when did Bengal, Behar and Orissa become *English Plantations*? He was not aware, that these possessions had ever been treated by the legislature as *English Plantations*; they had been subjected, on the contrary, to a distinct political and commercial system of their own; and, in all Acts of Parliament relating to them, they were described by a different denomination. At the time of the Navigation Act, some of our West India islands were planted, and some of our provinces settled in North America. To those the term "*English Plantations*" clearly applied at that time; for they were such in point of fact. It was therefore upon articles of the growth of those possessions, that the restrictions of the 18th and 19th Sections of the Navigation Act could alone, at that time, have been intended to operate. With respect to India again, his Lordship would not say, that it might not at some time or other grow to be, or even that it might not in some sense have already grown to be an *English Plantation*, to which the legislature might, if it were ever thought beneficial to this country and to Great Britain, extend the provisions of the Navigation Act:—it might be considered in its progress towards such a description. That point, however, it was unnecessary for him to consider, and therefore he should avoid saying more upon it. But who, he would ask, was to give the word, when this country should be

said to answer the full description of an *English Plantation*? Were Courts of Justice to legislate on such matters, and to run before Parliament in making declarations, which involved the most important political and commercial interests of the state. At the time when the Navigation Act was passed, it was clear, that this country was not an *English Plantation*. If it were now therefore to be considered as such, from what day did it become so? Was this a fit subject matter at all, he would ask, for the decision of a Court of Justice, sitting here to determine questions between party and party, and to settle individual rights? Was it for them to anticipate the judgment of the King and Parliament, upon a question like this, involving considerations of the deepest policy? It would be much better, in his Lordship's opinion, to take example from the caution of a great judge of these matters, SIR WILLIAM SCOTT, in the case of the *Recovery*, when he said, that "our Navigation laws have continued in a very undefined state with respect to our possessions in the East Indies;" meaning no doubt thereby, that as Parliament had not defined the state and description of these possessions, with reference to the Navigation laws of Great Britain in their full bearing, he would not undertake to define the extent of their application. And if such be the case, who but Parliament, his Lordship would ask, was to declare this country to be an English Plantation within the Navigation Act? For his own part, his Lordship would always be inclined, under circumstances like the present, to wait until he should be informed by some specific legislative provision, or at least by some public act of the state, before he determined such a question.

tion, involving so materially the policy of so large a portion of the empire. In the present instance, he saw additional and still stronger ground for waiting for a legislative declaration, since, in these 18th and 19th clauses of the Navigation Act, there were no prospective words, such as were to be found in the 1st Section of the Act. Upon the whole therefore, he would not take upon him to say, that India is an *English Plantation*, within the meaning of the two sections in question, the legislature not having hitherto seen fit to declare it to be so: and their not having done so, in any one of the numerous Acts passed relating to the government and commerce of this country, was, in his Lordship's judgment, of itself a sufficient ground for saying, that no forfeiture had been incurred in this case, upon the assumption that this country is an *English Plantation*.

But further, the arguments which had been urged at the bar, founded on the different legislative provisions made for regulating the trade of India, subsequent to the Act of the 12 Car. 2, were entitled, in his Lordship's opinion, to very great weight. For, even supposing the case to stand entirely neutral, and that the Court was compelled to say, in reference to the Navigation Act alone, that this country had grown to be an *English Plantation*, (though such an application of the term would no doubt be attended with very great difficulties, particularly as to the true relative meaning of the words "*English Plantation*," as before adverted to, taken either separately or combinedly,—and this too, where there appeared to be an intention on the part of the legislature at that time, to look only at the then existing *English Plantations*, by dropping the prospective words used in the first clause,

and still contrasting the larger words there used with "*English Plantations*" in the clauses in question,) without attempting, he said, to unravel these difficulties, it was material to consider, whether in fact the legislature had not, at different times, made declarations and passed laws, altogether inconsistent with the notion of British India being an *English Plantation*, within the terms and meaning of the Navigation Act. In this view of the case, it was to be considered that, from a remote period of time down to the present day, a distinct code of laws had been framed and was in force, for the special purpose of regulating the trade of the British possessions in India. The crown by its charters, confirmed by Parliament (9 and 10. Gul. 3 c. 44. s. 61,) had begun by granting to the East India Company, the privilege of trading freely to and from *all places*, within certain limits, beyond the Cape of Good Hope to the straits of Magellan, comprehending, as it is well known, a variety of foreign countries. And this grant did in substance still continue to the Company, though the benefits of the trade were now lately participated by other British subjects together with the Company, and though various regulations with the same view, had been passed from time to time during that long interval; by none of which, however, had that part of the Navigation laws, which concerned plantation bonds, been extended or applied to this country. This original grant and enactment put the East India trade within the limits, upon a totally distinct footing, as to the disposition of produce, &c. from that of the general colonial trade of England. It was different with respect to the provisions in the first clause of the Navigation Act, respecting

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the use of British ships and seamen, which had been referred to and applied to the East India trade; and that special application marked the omission, as to the taking of plantation bonds, more strongly. One of the first Acts which he had found to bear on this point, was that of the 21 Geo. 3. c. 65, passed for the better management of the Company's affairs, &c. which contained a clause, (s. 33.) wherein, to obviate doubts, whether the ships of the Company could lawfully navigate between Great Britain and India, by reason that many foreigners, as East India stockholders, held property in their ships, and consequently that such ships might not be considered as British ships within the meaning of the first clause of the Navigation Act, it was enacted, that all ships belonging to the East India Company, whether built or purchased by them, should be deemed and taken to be British ships within the meaning of the Act of the 12 Car. 2. "the same being navigated in the manner prescribed by the laws now in being respecting British-built ships, any thing in the said Act in any wise notwithstanding." Other like references to the Navigation Act, were to be met with in various other statutes relating to the East India trade. And it had been contended, that these several references served to shew, that the provisions of the Act of the 12 Car. 2. do extend to this country. But all the examples which had been quoted with this view, concerned merely those enactments of the Navigation Act, which relate to the built and navigation of the ships employed in the British East India trade, and went to provide for those enactments being complied or dispensed with, (as the case might be,) with regard to the Company's ships;

ships ; which ships, it must be remembered, were navigated without as well as within the limits of the exclusive trade ; and without which limits, they were beyond all question subject to the general laws respecting navigation, common to the kingdom at large, if not particularly excepted. Here then, in this 33d Section of the Act of the 21 Geo. 3, it was judged necessary to make a special provision, to protect the Company's ships from the penalties which, under the circumstances here stated, they might be liable to incur by the terms of the Act of Navigation, because the legislature were here providing for the trade carried on by the East India Company between India and Europe, and consequently had in view the required condition of their ships and seamen according to the general Navigation law of the realm, not only within but without the limits of their free and exclusive trade.

A like answer might be given to the several cases which had been referred to, in order to shew the opinions of different Courts and Judges, that the Navigation Act extends to India. In all, the question arose upon the applicability of the 1st Section of the Act, concerning the built and navigation of British ships to the East Indies ; though the expression, for brevity's sake, was general.

It was to be remarked, that the enactment of the 33d Section of the Stat. 21. Geo. 3. c. 65, to which he had just been alluding, went beyond the doubt which gave occasion to it, which was only concerning the partial ownership of foreigners holding stock of the Company ; whereas the section went on to declare, that all ships belong-
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ing to the East India Company, whether built or purchased by them, which might in fact include foreign-built ships, should be held to be British ships, and entitled to the privileges of such, within the meaning of the Navigation Act. Here then was a special and distinct provision as to the ships of the Company, different from that which had been before established by the Stat. 7 and 8, Gul. 3. c. 22. with respect to all ships and vessels employed in the Colonial or Plantation trade of his Majesty, which were required to be of English or English colonial built: still however providing, that such ships of the Company should be navigated according to the laws at that time in being. These were in fact the only two particulars, (as far as his Lordship could find,) in regard to which an express reference to the Act of the 12 Car. 2. was to be found, either in this or in any other Act of Parliament relating to the East Indies. It was the first clause of the Act, which in every legislative or litigated instance of such reference, was in contemplation; and not those Sections, which regarded the shipping of goods and the giving of bonds. The legislature, in speaking of the ships employed in the trade between this country and England, frequently adverted to the necessity of their being "navigated according to law;" but the expression "*shipped* according to law," had never been applied to goods, the produce of this country, in any of the Acts of Parliament in question. The regulations concerning the shipping of goods, of the growth, produce, or manufacture of English Plantations, and to the taking of plantation bonds, formed entirely a distinct branch of the Navigation Act. So far as regarded the East Indies, there were many provisions of subsequent statutes,

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which were not only not consonant to the 19th clause of the Navigation Act, but were in direct contradiction to it. One Act of Parliament, that of the 6th Anne, required quite a different security, a bond to a much larger amount than that exacted by the Act of the 12th Car. 2, to be given by the East India Company, for the bringing to England of all produce once conveyed by them beyond the limits, without breaking bulk during the voyage. Other Acts had designated particular officers for carrying this law into effect, not one of whom had ever been appointed in this country. The plantation bond was directed to be given to a Governor appointed by his Majesty. But, from the commencement of the Company's charters up to this time, no one Governor had been appointed in this country, who could be said to be a Governor appointed by the King; for, though India no doubt was under the paramount sovereignty of the crown, the dominion and government of it had been leased out to the East India Company from time to time, the crown had ceded from time to time its possessory right to the Company, and all Governors had been appointed by that Company. Those very Acts of Parliament relating to the East India trade, which had just been alluded to, provided, that the nomination of Governors should rest with the Company. The question had even been made, whether it would be consistent with national policy, to vest the patronage of India in the crown; and guards had been suggested; but Parliament hitherto, from considerations with which the Court had no concern, had thought fit to lease for a further term to the Company, together with certain exclusive privileges of trade, the power of government, including the
appointment

appointment of public functionaries to govern these territories, and had thereby rendered it impossible for any individual here, legally to comply with the enactments of the 19th Section of the Navigation Act.

There were also, continued his Lordship, some more minute differences to be remarked, between the system established by the plantation laws, and that framed by the Acts for regulating the trade of India. Thus, with respect to the penalties attached by the law to breaches of the Navigation Acts, and those for enforcing the statutes relating to the East Indies, the provisions were entirely different. In the one case, that of forfeiture under the plantation laws, the penalty was given to the crown; while, in the other, it was given to the Company. And it was impossible to overlook the absurdity, which must follow in practice from the argument of those who contend, that plantation bonds are to be taken by the Governors of this country, for the East India Company's ships; that those bonds must, on that construction, be given by the Company to their own servant, to be enforced for their own benefit. Such an absurdity as this was enough to shew, that the state of things which that argument supposed, never could have been contemplated by the legislature.

Without entering further into detail, it might be stated generally, that there was an entirely distinct set of legislative provisions, for regulating the trade carried on in English ships to the eastward of the Cape: the consideration of which different provisions, not merely left the question now at issue in balance, but went to shew, that it

never had been the intention of Parliament, to class this country as a Plantation, within the meaning of these clauses of the 12 Car. 2, so as to render it necessary for traders within the limits to give these plantation bonds. It was apparent on the face of several of the Acts referred to, that the legislature knew well how to apply to the East India trade, the provisions of the Navigation Act, in those particulars to which it had judged them to be properly applicable. But this had in no instance been done, by express reference to the bonding clause: and in none of the Acts of Parliament relating to India, was this country denominated, even in general terms, an *English Plantation*, so as to bring it within the description of that clause.

But what was to be said, next, to the two late Acts relating to the trade of India, the 53d and 54th* of the King? The provisions of those Acts, when contrasted with those of the 18th and 19th Sections of the 12 Car. 2, were quite contradictory in terms; and either the first-mentioned Acts could not stand, or the bond required by the 12 Car. 2, to be given, must now be a dead letter as far as concerned India. What was to be said, when we looked in particular at the Act of the 54th of the King, which, at the same time that it gives to his Majesty's subjects the free power of trading at all intermediate ports, in the course of any voyage to or from this country to Europe, and also to trade directly and circuitously between *all ports and places within the limits of the Company's charter*, (including, of course, all *foreign* ports and places within those limits,) in all articles of

* 53. Geo. 3. c. 155. s. 6. 7.—54. Geo. 3. c. 34. s. 1.

East India produce which can be legally imported into the United Kingdom ; specially *prohibits* them, from carrying any goods whatsoever *to any of his Majesty's Colonies or Plantations in America ?* These provisions were not only not consistent with, but were expressly contradictory to that clause of the Navigation Act, which required that, before the enumerated goods, of the growth, production or manufacture of any English plantation, in America, Asia and Africa, should be shipped for exportation, bond should be given, to carry the said goods *to some other of his Majesty's English Plantations*, or to England, &c. The question was brought shortly to this, namely, whether the plantation bond Act of Car. 2. (supposing it ever to have applied to this country,) or the Circuitous Trade Act of Geo. 3d (which in express terms applied to it,) was to prevail ? for nothing could be more different than these several provisions. Notwithstanding therefore all the difficulties which had been suggested, with reference to the repeated allusions to the Act of Navigation which occurred in the different statutes relating to the East Indies ; which were answered by shewing their application to the built and navigation only of the ships employed in the trade ; what was there, his Lordship would ask, taking the question of law in any point of view in which it could be considered with reference to this country, what was there to compel the Court, against all public utility, historical and judicial experience, and legislative interposition and construction, to say there shall be a forfeiture in the present case, for not having given the plantation bond required by the Navigation Act ?

His Lordship would say a few words upon the general policy, which appeared to have dictated the several Acts of the legislature, in respect to Navigation and Colonies, which seemed to him also to support the construction he had put upon the laws in question. Although the policy contemplated by the bonding clause of the Navigation Act might, in its general application, have been a true policy, it did not follow, that, with respect to all cases, it could be made equally effectual for promoting the ends which it had in view. The object of Great Britain, in making that and similar enactments, was perfectly clear ; it was to render herself the great d pot and emporium, to which foreign nations should resort for the purchase of colonial produce. But some desirable objects were practicable, and some were not ; or if in fact practicable, the price to be paid was too great for the benefit to be received ; and the policy of countries must necessarily be adapted to their physical and relative circumstances. With respect to the trade between Great Britain and the West Indies, the objects contemplated by the Navigation Acts, had always been sufficiently practicable : but here, in India, the situation of things was quite different. Our Indian empire was formerly, and for a long time, a disputed empire ; and although it was true, that we had eventually succeeded in driving all our foreign rivals out of the field, it had nevertheless been the liberal policy of Great Britain, under these circumstances, to shew her moderation and forbearance in matters of commerce ; and even after she had the power in her hands of excluding foreign trade from her Indian ports, it had still continued to be her policy, to allow foreign states in amity with England, to send their ships

ships directly thither for the purposes of trade: While indeed Denmark, France, and Holland, held possessions of their own on the banks of the Hooghly, how would it have been possible, without urging on a declaration of war, to have shut up this river against the vessels of those nations, and to have attempted to exclude them from sharing in the trade of India? But, independently of these considerations, it had been the liberal and magnanimous policy of Great Britain, to admit foreigners freely into the trade with this country, and to enable them by treaties to bring their ships and produce to its ports. How then was the original policy of the Navigation laws, which restricted the colonial trade to be carried on direct between the colonies and the mother country, to be adhered to under these circumstances? If, as in the case of the West India colonies, Great Britain could have prevented foreigners from holding any intercourse at all with India, it might perhaps in that case, (but he did not affect to give any opinion upon it,) have been to her advantage to have required, that her own subjects should carry all goods of the produce of this country to England, without any regard at all to the interests of other nations. But from the moment, that the several Acts * passed, by which foreigners were let in to traffick with their own ships and goods, at our settlements in India, the policy turned round, and was wholly changed. From that time, it became the interest of Great Britain to do the very contrary of that, which the bonding clause of the Navigation Act had in view;

* Viz. Stat. 33. Geo. 3. c. 52.—37. Geo. 3. c. 27, and c. 117.

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namely, to encourage the carrying trade of her own subjects, and, as she could no longer prevent foreigners altogether from sharing in this commerce, at least to enable her own ships and seamen as far as possible to cope with them, in carrying the produce of this country direct to foreign states. The Act of the 33d of the King, one of the Acts to which his Lordship had just alluded, contained a provision (s. 139,) for enabling British merchants, licensed by the Company to reside in India, to buy and sell, import and export goods on account of foreigners. By the 138th Section, it was prohibited to any British subject either in his own or any other name, to send any goods or merchandizes, the produce or manufacture of the East Indies or China, by the way of Suez, or by any other channel to Europe other than by sea. Now, what kind of policy, his Lordship asked, would that be, which should enable a British merchant residing here, to purchase and export goods of Indian production and manufacture, for foreigners, in foreign ships, when he was not allowed to do so for himself in a British ship? This would have been actually encouraging foreign trade and foreign ships, by excluding our own. When we saw the legislature here providing, that this clause for prohibiting any trade from being carried on by the way of Suez, should not be construed to prevent British subjects from acting as the agents of such foreigners as might chuse to carry on their trade by the high way of the Cape, the natural inference would have been, (exclusive of the national policy, which at that period secured by positive law to the Company the monopoly of the British trade between the East Indies and Europe, in exclusion of all other subjects of his Majesty,)

that

that the right of such subjects to carry on the same trade for themselves which they could do for foreigners, was not doubted. But, with respect to the Indian trade carried on within the local limits of the Company's charter, by British merchants licensed to reside and trade here by the Company; concerning which no question could arise of interference with the Company's monopoly; there was nothing to resist the force of that inferential argument, and of the policy apparent upon those acts. The same policy was pursued and further extended, by the Act of the 37th of the King, which opened the commerce of India generally to the ships of foreign nations in amity with his Majesty. Most certainly then, as soon as foreigners were allowed to come thus freely to the ports of this country, and to trade within the Company's limits, and Great Britain had made her own merchants the agents and factors for them, it became, as he had said, the clear and unquestionable policy of Great Britain, to get as much of the carrying trade as possible, the trade from port to port within those limits, into the hands of her own subjects: reserving as she did, at that time, the exclusive trade between the East India trading limits and Europe, for her own chartered Company. All these observations, his Lordship said, were meant throughout to apply to that Indian trade from port to port, within the limits of the Company's charter; in which trade, it had been the national object accordingly, as far as possible, to exclude foreign European nations by treaty from participating. But, if the merchants of England in this country were to be shackled by the plantation bonds now demanded to be taken, and restricted to carry all the produce shipped by them

to a British port, that carrying trade must necessarily be wrested out of their hands, and transferred into the hands of foreigners.

Looking then at the case now before the Court, his Lordship repeated, that the first doubt, which had suggested itself to his mind was, whether, supposing all other circumstances to be neuter, this Court should declare a forfeiture, for the omission by an individual of an act, requiring the concurrence of a public officer, there being none such here to concur ?

In following the general provisions and intent of the Navigation Act, the principal question which arose, was, whether this country had become an *English Plantation*, and when it became so? to which no satisfactory answer could be given. And that point never appearing to have been decided, the next consideration came to be, whether it was fitting for this Court to anticipate the legislature, in declaring India to be an *English Plantation*. In regard to Newfoundland, which had been referred to in the argument at the bar, the question whether that island was or was not an *English Plantation* within the meaning of the Navigation Act, had been considered by the law-officers of the crown as involving matter of state policy, (as indeed all such questions must in some degree do;) and accordingly, it was not until after the legislature had declared Newfoundland to be such a Plantation, that that construction was acted upon. No such legislative declaration had yet been made in regard to India; but as far as could be collected from different legislative provisions, rather a different view was taken of it. We had moreover the recent authority of Sir William Scott for saying, that

that the application of the Navigation laws to this country was still very indistinct. Were the Court then to leap to the conclusion of a forfeiture, without reasonable assurance of the firmness of the ground, and without any certain experience either legislative or judicial, to pronounce on this great question of national policy? Certainly not. When it should be thought fit to extend the provisions of the 18th and 19th Sections of the Navigation Act to this country, such extension would no doubt be declared by a legislative provision, in like manner as Parliament in the first instance, and the Courts of Justice afterwards, had already done, in regard to the application of the 1st Section of the Act, concerning the built and navigation of vessels, to the East India trade. Until such declaration should be made, the Court would not, he conceived, be warranted in determining Calcutta to be an *English Plantation*, within the meaning of the Navigation Act. At the same time therefore, that his Lordship had thought it right, under the circumstances of the present case, to declare his opinion on the general question which had been raised, he considered it to be quite sufficient to entitle the Respondent to a judgment in his favor, that the offence of omission, with which he was charged as for a forfeiture, depended upon an act, which was to be supplied not merely by the individual himself; but also by the concurrent act of a public officer, who having no existence here, could not concur with him.

Sir FRANCIS MACNAGHTEN said, he confessed, that he had felt, from the moment he heard of the decision at Bombay, very strong prejudices on the subject; that, with a fear of being misled

by them, he had read and reasoned in such a manner, as he thought likely to remove them; but the further he went, he found they increased, until at last they had ended in conviction.

If the question had been merely one of forfeiture in this particular instance, it could not have required much consideration; nor would it have excited any of the interest, by which the whole commercial body of India was agitated. He took it to be one of the utmost magnitude; for, if upon the grounds before us we condemned the *Cutter Dispatch*, we should put an end to the British commerce and navigation in these seas.

He lamented, that the Recorder of Bombay had not given to the public, a full and accurate statement of the grounds upon which he condemned the ship *Ernaud*.—A full report of his judgment might have enlightened, if it had not directed us in our way: and it was evident, that the statement which had been published could not be his. He said, there was a term in it, upon which much seemed to turn, and that he could not conceive one more exceptionable: he meant the term "*desuetude*." This, the Recorder was made to say, was no reason why the law should not be put in force against the ship he was then about to condemn. But, considering that the law upon which he acted, never had been extended to this country, and that *desuetude* meant the discontinuance of an use, and implied that the Acts in question had at one time extended to India, although the fact is, they never had, he could not but think, there was either a misapplication of the term, or a very erroneous report of the case. For his own part, he said, he could no more conceive the idea of *desuetude*, without presupposing an use, than he could

could conceive the idea of death without presupposing an existence; and as the laws in question never had been extended to India, he could not but look upon the introduction of the word (so far as it went) as begging the question.

Although *desuetude* or the non-use of an Act of Parliament would not operate as a repeal, it would at least furnish a good rule of construction. And, if an act has been passed for an hundred and fifty years, constantly in exercise, but never applied in any one instance to a particular purpose, it was reasonable to conclude, that the legislature did not intend it to apply to that purpose.

There were some decided cases in our Courts of Law, relied on by the Counsel for the Promovent; viz. the case of *Wilson v. Maryatt*, 8th Term Reports; and the cases of *Morck v. Abel*, and *Chalmers v. Bell*, in 3d Boscquet and Paler. The two latter he did not pay much attention to, for the first seemed to pass over the main question *sub silentio*. He could conceive, that there were personal considerations, which might have prevented those who were really interested in the Danish ship *Juliana Maria*, from agitating the question; and he could not otherwise imagine, why the Counsel for the Plaintiffs should have remained silent on a subject, upon which certainly much might have been said. The cause, we were told, came on; the Defendant resisted the claim, on the ground of the claim having arisen from an illicit trade under the Navigation Act, 12 Car. 2; the Plaintiff relied on his right to get back the premium, as the risk under those circumstances had never commenced; and the Court of Common Pleas determined, that he should not get back the premi-

Um. This was the whole of the case. As to *Chalmers v. Bell*, it was still more unsatisfactory, for in deciding it, Lord Alvanley took it for granted, that the trade was contrary to the Navigation Act; and assuming that, decided the Act not to be repealed by two Sections in the 33d Geo. 3d.

A consideration of the case of *Wilson v. Marryat* was much more material, inasmuch as it was decided upon more deliberation: but it was to be observed, that the extension of the Navigation Act to this country was not decided by it.—His Lordship could not think any decision as to that satisfactory, unless it went to subject a party to the penalties of the Act. In *Wilson v. Marryat* that was not the case: on the contrary, the party who was argued to have violated the act, succeeded in the action.—He admitted however, that it seemed both by the bar and the bench to have been argued, as if the Navigation Act did extend to India: but the principal point in contest, was that relating to the commander and part-owner of the ship *Argonaut*. It was alleged, he having been born in England, that although he went to America, he continued to be a British subject, and could not legally own or navigate an American ship to the East Indies. This appeared clearly to have been the principal question. Lord Kenyon said, he had been threatened with the displeasure of the East India Company and of the Americans.—He declared however, that Collet, the commander of the ship, was sufficiently an American, to give him the right to trade as such. Had he not been declared to be so, the trade so carried on by him would have been in violation of the Company's charter; and this accounted for the interest

the East India Company took in the question; as British ownership would have been followed by British capital, which would very much have affected the Company's rights. The breach of the Navigation Act, as it was supposed to have stood, was of little importance to them, as a treaty had passed, and been confirmed by Act of Parliament, opening the trade to the Company's territories to the Americans. That proceeding, he observed, furnished a very important point, as to the construction of the Navigation Act; for it appeared, that his Majesty's government had entered into the treaty with the Americans, without any Act of Parliament for the purpose, which they never would or could have done, had they believed the Navigation Act extended to India.—Sir William Scott told us, that, as soon as the question was raised, it was thought proper to pass an Act for quieting the apprehensions which had been raised by it; and therefore the 37 Geo. 3. c. 97. passed, ratifying and confirming the treaty; and afterwards the 117th of the same year passed, authorizing nations in amity with his Majesty, to carry on under certain restrictions the same trade. But entering into the treaty with America without any such Act, clearly proved that, in the opinion of his Majesty's government, the Navigation Act did not extend to India; for if they had supposed it did, they would not have entered into such a treaty; without an act for the purpose having previously passed.

His Lordship then referred to the case of "the Recovery," which had been cited from 6th Rob. Adm. Rep. He observed, that all the cases, (those of *Wilson v. Marryatt*, *Morck v. Abel*,

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and *Chalmers v. Bell*), had been decided before the case of the *Recovery* came before Sir William Scott. The last of them was decided in 1804; and the case of the *Recovery* was not until 1807. Sir William Scott, therefore, had all the other decisions in his contemplation.—The case of the *Recovery* went off, from a want of jurisdiction in the Prize Court into which it had been brought —But the sentiments of Sir William Scott were well deserving of notice.—He said, speaking of the extension of the Navigation Acts to the East Indies, “With regard to the fact, *I* had *always* entertained the notion, that they had *not* hitherto “been so applied.”—Here then was a declaration of his opinion on the subject. And he certainly did not acquiesce in the decisions (if so they can be considered) of the Courts of Law; for he concluded by saying, “Whether it may be deemed “fit to bring forward the question in another “Court,” (the Court of Admiralty,) “where the “discussion may be regularly introduced, whether, “under all the circumstances of laws *not acted* upon, but *counteracted* by an *opposite* practice, it “shall be held, that this course of trading is subject to the penalty of our Navigation laws, is a “question for the consideration of those by whose “advice the captors will be directed.”—This SIR FRANCIS said, he considered as a declaration of Sir William Scott, that he did not think the question foreclosed, by what had passed in the Courts of Law,—and an intimation of his doubt, whether a law *not acted* upon, but *counteracted* by an opposite practice, could be carried so far as to produce penalty. It would be seen, Sir FRANCIS said, that the term “desuetude” would not at all have con-

veyed, what Sir William Scott wished to express, as to the Navigation laws with relation to India. — If he had spoken of desuetude, the language of that great man had probably been very different.

The case before this Court, Sir FRANCIS said, was not one, which rested for its defence upon desuetude of the laws, but one to which the laws never applied, and never could have applied; for since the reign of Elizabeth, and perhaps a century before the passing of the first Navigation Act, (taking the 12th of Car. 2. to be the first,) there was nothing in the trade of this country upon which those laws could have operated. — Before that of Bombay, there never was a decision that the laws did so apply; and therefore if they had been held to apply to all trade to and from Europe and the East Indies, it would not follow, that they were to be applied to the trade in the East Indies. — For upwards of an hundred and fifty years, (the 12th of Car. 2. having passed in 1660,) the trade in this country had never until now been supposed liable to them. — Charters in regular series had been granted to successive Companies, from the reign of Elizabeth, although the first Act of Parliament empowering the King to grant a charter, passed in the reign of William 3d. — Therefore, all the King's subjects had been enjoined by the prerogative, which was at least thought sufficient for the purpose, from trading, except under licence from the several Companies, within the limits of their exclusive trade; and the same prohibition continued down to the 53d Geo. 3, by which any of his Majesty's subjects may go to and reside, for all lawful purposes, without the 64th and 150th degrees of longitude and 11th degree of southern latitude,

latitude, although they have not any licence whatsoever.—The absolute prohibition however, with the exception which he had mentioned, Sir FRANCIS said, had uniformly continued; and any person trading without the licence of the East India Company, was subject to forfeit his ship, goods, &c. When there was an absolute prohibition, it would have been absurd, he said, to apply a qualified one. It would surely have been absurd, to prohibit the trade altogether, and to make it legal at the same time by the observance of a special mode of navigation. And he could not, he said, discover that any special mode of navigation had ever been imposed upon those, who had the licence of any East India Company to trade in India. It was impossible, he thought, to apply the Navigation Acts to this country, without producing the greatest inconsistency, both in the laws and in the practice under them.

The reversal of the decree of the Court of Madras, which had been mentioned by the ADVOCATE GENERAL, was a very striking instance of the notion which is entertained at home, with respect to the application of the Navigation laws to India. India seemed clearly to be included in the 26th George 3d. Indian ships by that Act ought to have been registered. The ship brought before the Court of Madras, was condemned for want of a register. In that case, neither desuetude nor non-action could be pleaded; for the Act, under which the ship was condemned, had existed but a few years: yet the condemnation was reversed on appeal, because it was thought, that the Act could not be said to apply to this country,

in

in which there were not proper officers to carry it into execution.

Sir FRANCIS said, he could, if it were necessary, quote many Acts of Parliament, which held a language, that proved the legislature did not contemplate an extension of the Navigation Acts to the East Indies.—He thought it useless to do so. He saw no reason to suppose, those acts extended here; and there were many to suppose, they did not.

He agreed, he said, entirely with the Advocate General in thinking, that this case ought to be determined upon the broadest ground, and that, having it before us, it ought so to be disposed of, as to set the minds of the mercantile community, so far at least as our decision could do it, at rest. It signified, he said, but little to the Impugnant, and nothing at all to the public, whether the schooner in question was to be condemned or not;—but upon the principle, the existence of our commerce stood at stake. And, if the decision which had taken place at Bombay were to be acted upon throughout, there would be an end of our trade and navigation in these seas—No more at least could remain, than might be sufficient to remind our merchants of what they had lost.—They might still, he said, carry on a trade hence to Madras and Bombay; and it would not follow, that they must be shut out of all commerce with Ceylon, Penang and Bencoolen; but here it must end.—As to all beyond Bombay,—the Persian Gulf, the Red Sea, and all seas to the eastward, they must be absolutely cut off. In his Lordship's opinion, he said, all commercial dealing with those places would be abso-

lutely interdicted, by such a sentence as was sought by the Promovent.—It was certain, he said, that, after such a sentence, we could not trade with them; and he was much inclined to think, they could not trade with us.—It was true, he said, that, by the 37th George 3d, c. 117, all foreign nations in *amity* with His Majesty, may trade to the Company's possessions in the East Indies.—But were those nations in amity, in any sense of the word? If it meant any thing, they were not. There was no mutual acknowledgment of any code of jurisprudence; there was no treaty; there was no ambassadorial intercourse between any of them and Great Britain. But at best, he said, they must have all the trade in their own hands. The consequence would be a reversal of the policy of our laws, and a setting up of an opposite and contrary one in its place; it would be a measure, which must increase the shipping and navigation of our neighbours, and diminish, if not destroy, our own.

As to the name by which our possessions in India may be called, Sir FRANCIS said, he did not think it worth a cavil; and he was satisfied, for all the purposes of this argument, that they should be called and considered *Plantations*. He said he would for the occasion call them so;—however erroneous it might be to apply the term, he said, from the view he had taken of the question, it never could be in the slightest degree affected by such an application.

Every provision of the Navigation Acts, bonding excepted, had, he said, with respect to the trade in this country, been expressly taken away; and, as to bonding, that it was utterly inconsis-

tent with subsequent acts, and utterly impracticable in itself. But, after all, he said, if the law be as was contended for, whatever might be the consequences, it must be pronounced. Was it so? The question here raised, and the only one which could have been raised, was upon that part of the Navigation Acts, which requires a bond.

By the 7th and 8th of William 3. c. 22, all Governors were to take a solemn oath before their entrance into office, to do their utmost, that *all* the clauses, matters and things contained in the Acts theretofore passed, and in that Act, be punctually and *bonâ fide* observed. Then followed the penalty for neglect.

That no Governor of India, had ever been called upon to take such an oath,—that no Governor had ever thought of enforcing an observance of any such Acts,—that no Governor had ever been called on to answer for his neglect, Sir FRANCIS said, he conceived to be a strong argument, against the extension of those acts to India. If a Governor were now to take bonds for the first time, he must, Sir FRANCIS presumed, take them in conformity with the Navigation Acts, and he could not, nor would he have a right to take them in any other manner;—he must take them, conditioned for the landing of the goods shipped, (if not in England, Wales or Berwick-upon-Tweed,) in Great Britain or Ireland, or in some Plantation belonging to His Majesty. If he took them in any other form, it could not be justified. He must, if he took them at all, take them in the form in which the extension of the Navigation Acts to this country presupposed

him to have sworn to take them ; and if he took them in that form, he would and must annihilate the trade of the country.

The trade, Sir FRANCIS said, out of the King's *Plantations* must stand still, or the Governor, if he takes a bond at all, must take it in direct violation of the Navigation Acts, and of the oath, which, if we condemn this vessel, he ought to have taken. If the Navigation laws were extended to India, all trade *in* India and *out* of the British Plantations, was illegal. And, if a Governor were to take a bond, conditioned for the landing of goods at *any* place in India *not* a King's Plantation, he would be compelling a man to do that which he had sworn or ought to have sworn to prevent.

But getting over all those difficulties, it would be impracticable after all. Sir FRANCIS said, he was informed, the great bulk of our trade in India was carried on by barter. Supposing, he said, that a ship were to sail for the island of Borneo, and that the Governor could take a bond, for the laying her cargo or a part of it on shore at some port there, he might not be able to dispose of it at the first, second, third, or fourth port she got to in the island.—What was to be done? There were no factors with whom it could be left. Perhaps the only safety would be found, in throwing it overboard upon the shore, and there leaving it to its fate. If it were to be carried to the next port, the ship, with guns, tackle, lading, &c. might be seized and condemned, for having the cargo on board, which ought to have been laid on shore ;—and the penalty of the bond would be recovered, for not

having

having complied with the condition, although, if the condition had been complied with, it might have been to the ruin of the merchant.

But, if it had ever been possible to entertain a doubt upon the subject, it could no longer exist since the passing of the 54 Geo. 3. c. 31; for it was not in the nature of things, that the Navigation Acts could stand along with it, or that it could admit of a bond being taken under them.—The Company's territories formed a very small comparative portion of the space within the limits of its charter.—The 54 Geo. 3. declared, that it shall be lawful for his Majesty's subject, to carry on trade and traffick, in ships navigated according to law, (and the 55 Geo. 3. c. 116. did not require any number of British seamen, but permitted ships trading to the Cape of Good Hope inclusive, to be manned *wholly* with *Asiatic* sailors,) directly and circuitously, between all ports and places (with a special exception) within the limits of the Company's *charter*.

If the navigation laws ever extended here, did not this, he asked, repeal them? If two Acts were inconsistent with each other, the oldest, he said, must give way. The Navigation Acts most expressly declared, that goods shipped at an English Plantation shall, if not taken to England &c. be landed at another English Plantation; and the 51th Geo. 3. gave a *right* to trade and traffick directly and circuitously, within the limits of the Company's *charter*.—This included a space, immensely greater than that which was occupied by the English Plantations; for, he said, that to call them so can make no manner of difference in the

argument.

argument. It was impossible, he said, to require a bond under the Navigation Acts, without cutting off the subject from the rights which are conferred upon him by the 54th Geo. 3d.

He felt desirous, he said, of compressing what he had to say into as narrow a compass as possible; and concluded by declaring it to be his opinion, that the Navigation Acts never had extended to the trade in India,—that there never had been until now a provision for the execution of any of them here,—that the extension of them would be destructive of our trade,—and, if any doubt could ever have existed, that is was now done away.

Sir ANTONY BULLER said, that, from the time of the first establishment of the East India Company by the charter of Elizabeth, this country had never, as it appeared to him, been treated by the legislature as a plantation, like the plantations of His Majesty in America and the West Indies, or to which the provisions of the 18th and 19th Sections of the Navigation Act, could be held to apply.

But even if the provisions of these two Sections of the Navigation Act ever did apply to this country at all, his Lordship thought that those provisions had been expressly repealed, in as far as concerned India, by the Act of the 9th and 10th Gul. 3, which empowered the persons to whom the exclusive trade was thereby given, freely to traffick and use the trade of merchandize, to and from all islands, ports, havens, creeks, &c. within the limits therein mentioned, and which Act also directed, if they brought their merchandize out of these limits, to carry it direct to England,

land. That Act therefore not only gave the exclusive trade to India to the persons therein mentioned, but put that trade on a completely different foundation from that of the English Plantations. While they enjoyed the privilege, under the Navigation Act, of carrying their produce to other English Plantations, the British possessions in India were not permitted to hold any commercial intercourse whatever with those Plantations, but were in fact placed on a directly opposite footing, and subjected to a system of their own of a totally distinct character. If then the above Sections of the Navigation Act ever did refer to this country, that Act, he conceived, in that respect repealed them, and left the trade within the limits prescribed perfectly free and open.

The Act of the 33 Geo. 3. c. 52, and indeed all the Acts which from time to time renewed the Company's charter, went nearly in the same terms, and confirmed in the fullest manner the exclusive privileges conferred on the East India Company by the statute of William, subject to no other exceptions or restrictions, than those contained in the Act itself. During all the intervening period, from the Act of William down to the Act of the 53d of the King, the Company had exercised the power of regulating all trade carried on by British subjects, between port and port to the eastward of the Cape, unfettered by any restrictions. And when the legislature at length, by the Act of the 37 Geo. 3, extended to foreigners the privilege of trading to the British possessions in India, it was not to be believed, but that they would then have given the same privilege to the subjects of His Majesty, had they not conceived

such

such privilege already to extend to them. In fact, it seemed to have been treated all along as a settled point, that the Company possessed the full and uncontroled power of exercising and regulating this trade, under the Act of the 9th and 10th of William.

As to those cases again, which had been cited by the counsel for the Promovent, to shew that the Navigation laws extend to this country, they applied solely to the provisions of the 1st clause of the Act of the 12 Car. 2, as to trading in English-built ships, manned and owned by English subjects. And, exclusive of the doubt suggested by Sir William Scott, as to the applicability even of this part of the system to the trade of India, it seemed to his Lordship to be perfectly consistent to suppose, that the first clauses of the Navigation Act were in force, restricting the Company's trade to be carried on in ships of the description in question, and still that it was a perfectly free trade, in as far as concerned the commodities to be shipped, and the places to which they might be carried.

The Circuitous Trade Act also seemed to him perfectly inconsistent with the 18th and 19th Sections of the Navigation Act. It had been attempted indeed to contend, that the terms used in the Act, viz. "in ships navigated according to law," went to limit the commerce which might be carried on under that statute, in as far as concerned the enumerated commodities in question, to British ports and plantations only, as designated in the 18th and 19th Sections of the Act of Navigation. But His Lordship thought it was scarcely possible for any man, to read the

R E P O R T

OF

PROCEEDINGS,

IN THE

SUPREME COURT OF JUDICATURE,

AT FORT WILLIAM

IN BENGAL,

AT THE

Sittings after Third Term, 1809;

IN AN ACTION OF TRESPASS,

Charles Russell Crommelin v. John Ahmuty.



CALCUTTA;

PRINTED BY A. G. BALFOUR, FOR SCOTT AND CO.

NO. 20, RADAH BAZAR.

1810.

➡ The first part of the pleadings in this Cause, including Mr. LEWIN's speech on behalf of the Plaintiff, and the first part of the ADVOCATE GENERAL's speech in defence, were taken down by the Compiler ; the remainder of the ADVOCATE GENERAL's speech in defence, the whole of Mr. LEWIN's reply, and the opinions of the Judges, are given in a more succinct form, from the memoranda of one of the Counsel employed in the suit ; and the depositions, exhibits, &c. are taken from authenticated copies, extracted from the Records of the Court.

PROCEEDINGS
OF THE
SUPREME COURT OF JUDICATURE.

Charles Russell Crommelin v. [REDACTED] Ahmuty.

CALCUTTA, JULY 19, 1809.

PLAINT, filed 5th November, 1808,

STATES ;

THAT the Defendant is in the service of the United Company of Merchants of England, Trading to the East Indies, and is therefore subject to the Jurisdiction of this Hon'ble Court.

That the said Defendant, on the 15th day of July, in the 15th year of the reign of our Sovereign Lord the now King, and on diverse days and times between that day and the day of affiling this, the Plaintiff of the said Plaintiff, at Azinghur, in the district of Gorukpore, to wit, at Fort William in Bengal aforesaid, with force and arms, tore up, rooted up and destroyed 1000 maunds of Indigo Plant, of great value, to wit, of the value of 20,000 Sa. Rs. the goods and chattels of the said Plaintiff ; which said Indigo

Plant, at the time when and until it was torn up, rooted up, and destroyed, as aforesaid, was then and there lawfully standing and growing, in and upon the several closes of Madoram Oggerwal-lah, Rumjaunkhan, Nerhoo Kyree, Seik Torrab, Buxoo Khan, Alladeen, Buckut Khan, Bho-yroram Koormee, Jaunsye and Boodah Aheer, Chutterput Kyree, Nurkoor Mally, Sewah Sonor and Bucksee Byzoomauth Doss, Meharban Sing, Adda Kyree, Denah Mate, Pobarroo Sekulgar, Dursoo Koormee, Meer Noorally, Seik Rostumally, Bachun Duffer Chaund, Rosou Boormee, Peerbuks Khan, Seik Moorand Al-lumbeeram and Situlpersand, Allumbee Ram Paureh, Situl Doss, and Khurgoo Nunda, Aheer Nuckehed and Ordoll Sookamul, Darogah Sewdial Roy, Hoomel Roy and Ramnewaje Omrow Roy, Sunmaun Roy, Khakee Roy, Doongoor Nooncah, Jenram Mate, Bheechook Opadah, Bechun Roy, Duljeet Roy, Hurnaun Sing, Joyjeet Pattuck, Ramsehye Doss. Meer Azmuttally, Seik Facoo, Kebul Aheer, Maddoo Roy, Sewbucks Roy, Govindram, Mohun Roy, Hergovind Missur, Denah Roy, Chardah Roy and Lowton Roy, Bhugwan Sing, Sewbucks Sing, Sew Roy and Jodah Roy, Bhugwan Sing, Sewdutt Sing, Bheemundy Sing and Sewdutt Sing, &c. &c. &c. by and with their several and respective consents and licences: by reason whereof, the said Plaintiff not only lost, and was deprived of the said Indigo Plant, amounting in the whole to a great value, to wit, to the sum of 20,000 Sa. Rs. but also lost a further

large sum of Money, to wit, the sum of other 20,000 Sa. Rs, which he might and would have gained, by the profits of the sale of the said plant, and the seed and produce thereof, if the said plant had not been so torn up and destroyed by the said Defendant, as aforesaid, to wit, at Fort William in Bengal aforesaid.

That the Defendant, to wit, on the 15th day of July, in the 17th year of the reign of our Sovereign Lord the now King, ~~and~~ on divers other days and times, between that day and the day of affiling this, the Plaintiff of him, the said Plaintiff, with force and arms, tore up, rooted up, and destroyed other 1 000 maunds of Indigo Plant, of great value, to wit, of the value of 20,000 Sa. Rs. the goods and chattels of the said Plaintiff: by reason whereof, the said Plaintiff not only lost and was deprived of the said last-mentioned Indigo Plant, amounting in the whole to a great value, to wit, to the sum of 20,000 Sa. Rs. but also lost a further large sum of Money, to wit, the sum of other 20,000 Sa. Rs. which he might and would have gained, by the profits of the sale of the said last-mentioned plant, and the seed and produce thereof; if the said plant had not been so torn up, rooted up, and destroyed by the said Defendant, as aforesaid, to wit, at Fort William in Bengal aforesaid: and other wrongs and outrages to the said Plaintiff, then and there did, against the Peace of our said Lord the now King.

Damages Sa. Rs. 50,000.

MR. FERGUSSON opened the case on the part of the Plaintiff, by recapitulating the several counts of the *Plaint*.

MR. LEWIN, Senior Counsel for the Plaintiff, then addressed the Court.—This, he observed, was an action brought by a gentleman of the highest respectability, and whose character in the eyes of the world had ever stood in the fairest light. To this circumstance he thought it right more particularly to advert; because, in the present case, indignity formed a part of the injury, of which he had to complain.—His client was not a man likely to come before a Court of Justice, with a frivolous story. The circumstances of his case, indeed, were such, as had left him no choice. When the most grievous injustice was practised, under the name and pretext of magisterial authority, it became a public duty to drag it into view; and, the man who should shrink from that duty, might justly be considered an accomplice with the oppressor. It was pretended, that the acts, of which he had to complain, were committed under the authority of Government. He should shew however, not only that they were not sanctioned by the orders of Government, but that the Defendant knew that they were not. He was much relieved, by finding no reason even to glance at the conduct of Government, throughout the whole course of the transaction. Every public officer, he was ready to admit, ought to be supported in the legitimate exercise of his au-

thority.—but, where law ends, there, he contended, tyranny begins. To the tyranny of an individual, acting under the colour and pretence of law, his case was confined.

In the year 1803, the Plaintiff, *Mr. Crommelin*, was Commercial Resident at the stations of Benares, Gorukpore, Mow and Azimghar, and of course authorized by the Regulations of Government to trade;—the Defendant was, at the same time, Judge and Magistrate of Gorukpore. Some time in the course of that year, the Plaintiff formed the intention of establishing Indigo Factories within the Gorukpore district. At that time, there subsisted a Regulation of Government,* framed in 1803, by which Europeans were prohibited from establishing such Factories, without the special authority of Government. *Mr. Crommelin* did not very strictly advert to this Regulation; he did not doubt, but the permission of Government would be granted to him, as it had before been granted to others under similar circumstances; and he proceeded accordingly to build Godowns on the land which he had purchased, and to make other preparations, in pursuance of

* See Regulation 19, of 1803. This Regulation prohibits Europeans of every Nation, from purchasing, renting, or occupying, directly or indirectly, any land in the Ceded Provinces, without the sanction of Government; and declares all such persons, then or afterwards holding lands there, liable to be dispossessed of the same, at the discretion of Government, without indemnification.

CHARLES RUSSELL CROMMELIN

his undertaking. He afterwards became satisfied of his error. in so far as to give up all idea of holding land in his own right, without the sanction of Government. From this he was certainly debarred by the Regulation above alluded to. [*Here Mr. LEWIN read the Regulation*] The object of this Regulation, he continued, was to secure the ease and happiness of the inhabitants of this Country in the possession of their native soil, and to exclude the unwarrantable lodgements of Europeans. It still reserved however. an appeal to the equity of the Governor General in Council, in cases of particular hardship. That the Defendant had a right to dispossess *Mr. Crommelin* from any land, which he had occupied without a licence, he (*Mr. LEWIN*) was ready to concede. But, he contended, that it never could have been in the imagination of Government,—that it never could have been in the imagination of any rational man, not even of the Defendant himself, to construe this law, as entitling a public officer to go abroad into his district, to ravage and lay waste the fields of the Ryots. Nor, supposing it possible that the Defendant should have so understood it, could his misconstruction be set up as a justification of the act. *Mr. Crommelin*, however, did not persist in holding the lands; but, falling perhaps into another inaccuracy, he parted with his property *bona fide* to a man named Gokul Chund,—thinking that he might, without illegality, rent the lands from him. At length, he found his error in this point

Versus JOHN AHMUTY.

also ; and, giving up all idea whatever of cultivating the ground, he had recourse to another expedient. He (MR. LEWIN) was not afraid to make use of the word ;—for it was an expedient, perfectly lawful and honest. He made advances to Natives for the cultivation of Indigo, and took agreements from them to sell him their produce, as it came up. It was a fundamental principle of policy, he conceived, to abstain from all direct interference with the exercise of industry, and to allow the cultivator to reap the profits of his land in his own way. He could not see, why it should not have been competent for *Mr. Crommelin* to buy Indigo weed, any more than for himself (MR. LEWIN) to buy it. Nor did he conceive, that it could by any possibility be contended, that, because he had purchased the produce, *Mr. Crommelin* had possession of the land. It would be a waste of time indeed to go further into such a question. Property so derived, was held under contract, not under possession. He was at a loss therefore to discover, how the Regulation could be applied to the case. Some time after, *Mr. Crommelin* had entered into these agreements with the Ryots,—the seed having in the mean time been delivered to them, and the weed being considerably advanced in growth,—a correspondence took place between *Mr. Ahmuty* and Government, relative to the right of Europeans to hold lands in the Ceded Provinces. The explanation of Government, on this occasion, as was to have been expected, plainly ne-

gated the right. The case of *Mr. Crommelin*, however, was not at all affected by such decision.

It was impracticable, by the rules of Law, to go to the full extent of the injury committed, in the present action. Part of the Plaintiff's loss consisted in the actual destruction of property, and part in the prevention of profit. It was for the former alone, that the Plaintiff now sued. Consequential loss could be remedied only by an action on the case. This was an action brought, for the destruction of goods and chattels.

The next point to which he had to call the attention of their Lordships, was to a document called a Judicial proceeding.* It was a proceeding held by the Judge and Magistrate of Gorukpore, immediately consequent to his correspondence with Government above-mentioned. And here, he was aware, that another strong ground of objection was liable to start. He was aware, that, by the law of England, no order or decree of a Judge in the Mofussil, issued in his judicial capacity, could subject him to an action. But, this, in truth, was nothing like a judicial proceeding:—it was a measure of expedience; and bore no resemblance or analogy to the judgment of a Court of Law. A man could not sanction acts of devastation and oppression, by signing

* See Exhibit, No. 13, in Appendix.

‘ Judge and Magistrate’ to his order. Suppose, for instance, *Mr. Ahmuty* had issued an order to burn a village ;—would that have been justified by his official character ? The order, which he had actually issued in this case, *Mr. LEWIS* contended, was equally objectionable. It was an order, to root and dig up all the Indigo, for which the Natives had received advances. The burning of their houses would have been of less consequence to them,—for those might have been repaired. But, this was the absolute destruction of their harvest, and of the means to which they trusted for their subsistence during the year. If, from the documents before the Court, there could be discovered the least idea of such a measure, existing at the time in the minds of Government, there was an end of the cause. But, he submitted, that nothing whatever of the kind appeared. He trusted, that the presumption, on the contrary, would be, that the Government were averse to unlawful violence,—were averse to such acts as this, repugnant to all policy, and calculated only to excite the detestation and abhorrence of the people over whom they ruled. He was at a loss, indeed, to conceive, how any plea could be set up on this ground, in justification of the acts complained of.

This order being issued, was, as he (*Mr. LEWIS*) thought, most barbarously executed. It continued in full force, from the 15th of July until September following,—many months after

it had been disavowed by the Magistrate. During that interval, mutchulkas were taken far and wide from the tenants; binding them, in the manner of recognizances, to root out the Indigo which they had planted. [*Here Mr. Lewin read the Order in question.**] The passage of this Perwannah, on which singly he relied, was the order to root out the Indigo. The returns of the Police Darogahs shewed, how fully they had complied with the Order. He should read one, dated the 14th of August, 1807, wherein the Darogah stated, that he had informed the tenants of the Order, and that they had in consequence dug up their Indigo.—[*Return of Joygopaul Paurch, Police Darogah of Pergunnah Nizamabad, read. †*] If the Judge really meant, in point of law, not to be responsible for these proceedings, it was surely his duty to have interfered, so as to prevent further devastations. But, no such interference appeared, until the 25th of September. Then, for the first time, *Mr. Ahmuty* issued a perwannah; ‡ by which the Darogahs were told, that it had not been intended to enforce the order respecting the digging up of the Indigo, but merely to explain it to the cultivators, and to inform them, that it would be better for them, if they

* See Exhibit, No. 13, in Appendix.

† See Exhibit, No. 14, in Appendix.

‡ See Exhibit, No. 14, in Appendix.

rooted out the Indigo plant from their fields, and cultivated something else. And here, he would take the statement of *Mr. Ahmuty* himself, which pronounced his own conviction with respect to the impropriety of these measures; and by which, *Mr. Ahmuty* shewed himself fully aware, that he had no right to use force against these people, or to distrain their harvest. A man was not at liberty to destroy the property of hundreds, because he might conceive, that some political mischief would ensue from the mode in which their industry was directed. He did not mean to say, that *Mr. Ahmuty* had not disavowed the orders of the 15th of July, before the 27th of September; but he denied, that he had before taken any efficient step to stop their operation. A copy of the *Mutchulkas* taken, under these orders, from the *Ryots*, he should now read to their *Head-ships*. [*Mutchulka read.*] By this instrument, the industrious husbandman was required to abstain from the cultivation of Indigo, and to dig up what he had already planted, or to submit to such punishment as the Presence might think fit to impose. This, he contended, was an unjust and illegal exaction. He was amazed, that an attempt should be made to vindicate such oppression, in a Court of Justice. The last document which he should read, was the Agreement between the Plaintiff and the cultivator, by which the latter bound himself to plant and deliver in, a certain quantity of Indigo

weed. [*One of the Agreements read.**] By this agreement, he contended, the property of the weed was vested in the Plaintiff, as it came into existence. It was in fact sold; and delivery only was wanting, to give the sale effect. And, he submitted, that it was competent for any man, thus to bargain for and sell property, before it came into existence.

CHIEF JUSTICE. “ I do not wish to interrupt you, Mr. LEWIN, in this stage of the cause. I would merely suggest, whether an action of Trespass can lie, in such a case, where the Plaintiff was not in possession.”

In reply to this observation from the Bench, Mr. LEWIN proceeded to argue, that the Plaintiff had a title, as a sort of joint-tenant, in the Indigo weed, as it grew up; and cited a case in proof of his position. The Court, he was confident, would be of opinion, that, to the extent of his share, his Client did hold a property in the weed. After hearing the evidence, they would be satisfied, that it was his personal property,—and that the violence committed on that property, had been committed by order of the Defendant.

CHIEF JUSTICE. “ I wish, you would state something further, with respect to the facts. It would be satisfactory to the Court to hear, what injury was actually committed, and to

* See Exhibits Nos. 1, 2, 3, 4, 5, 6, 9, 10, 11 and 12, in Appendix.

“ what extent.”

MR. LEWIN. “ I am not prepared, my Lord,
 “ to go into the detail, further than by stating,
 “ that the Darogahs issued the orders, which
 “ they had received, to the Ryots; and, that
 “ the Indigo was actually dug up, between the
 “ 15th of July and the 27th of September,—in
 “ some instances, by the Police peons,—in some,
 “ by the cultivators themselves. The particu-
 “ lar acts of devastation will be described by
 “ the Witnesses.”

ADMISSION TAKEN ON BEHALF OF THE PLAINTIFF.

In the Supreme Court of Judicature, at Fort William in Bengal, this nineteenth day of July, in the year of our Lord Christ One thousand Eight hundred and Nine.

Court of Pleas] [Sittings after Third Term.
 1809.

<p><i>Charles Russell</i> <i>Crommelin</i> versus <i>John Ahmuty.</i></p>	}	<p>MR. SMITH, Advocate for <i>John Ahmuty</i> the Defendant in this cause, admits, for and on the behalf of the said De- fendant, that he is subject to the Jurisdiction of this Court, after the form and in the manner stated in the Plaint in this cause.</p>
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A. MACTIER,

Clerk of the Depositions.

• RUNJEET ROY CALLED AND SWORN.

This Witness, being examined on behalf of the Plaintiff, by MR. FERGUSSON (junior Counsel for the same,) deposed, as follows :

I am a Zemindar, of Kishnodossipoor, and am a Zillahdar of Mr. Crommelin's Indigo godowns or manufactory at Bussaoleah.—I know *Galley Roy* and *Soophul Roy* of Goadpore.—Goadpore is in Pergunnah Nizamabad, Zillah Gorukpore.—I saw *Galley Roy* and *Soophul Roy*, in the month of Assin, 1214 *Fusillee*, on the subject of advances for Indigo. I saw money paid to them by *Bunnepersaht*, who is a Gomastah of Mr. Crommelin's, and *Sirnam Sing*, a person acting under him.—On the first occasion, *Galley Roy* took three Rupees as advance for one biggah ; and, on another occasion, he took one Rupee for seven biswas of ground. *Soophul Roy*, on the first occasion, received three Rupees as advances for one biggah ; and, on the second occasion, four Rupees and one half for one biggah and a half.—There were written agreements, on both these occasions. I know *Sirnam Roy* and *Madhoo Roy*.—They were present on the last occasion, not on the first occasion.—They were present on one occasion ; —I believe it was the first occasion they were present, and not the last.—I look at the paper No. 1. * The subscribing Witnesses

* See Exhibit No. 1, in Appendix.

to the execution of that paper, are *Sirnam Roy* and *Madhoo Roy*; the contracting parties are *Galley Roy* and *Soophul Roy*. The parties contracting, and the Witnesses, were present, when that paper was executed. I wrote the name of *Galley Roy*, at his desire, and the names of the Witnesses, *Sirnam* and *Madhoo*, by their desires. The paper was read over and explained to *Galley Roy* and *Soophul Roy*, at the time of executing it. *Soophul Roy's* name is to that paper. I wrote it at his desire. They are brothers joint.

RUNJEET ROY.

MR. FERCUSSON. " I shall call one of the
 " subscribing Witnesses to the agreement, and
 " one of the contracting parties; in order to
 " show, that it was by desire of the parties, that
 " their names were affixed to the Agreement."

GALLEY ROY called and sworn.

Deposed :

I am a cultivator of land at Goadpore, in Pergunnah Nizamabad.—I know one *Bannepersaud*, who was Gomastah of an Indigo Manufactory there. In Assin, 1214 Fusillee, I took advances for Indigo from that person, and gave a written agreement. I received six Rupees the first time, and eight Rupees the second.—There was a paper signed on one of these occasions by *Runjeet Roy*, at my desire. Being unable to write, I touched the

pen, and desired him to sign my name.—The first payment was for two biggabs, and the second for two biggabs and six biswas.

his
GALLEY \times Roy.
mark.

MR. FERGUSSON. “ I need not go to examine the other *Witness* ;—as the agreement is not proved. This man states the sums which he received in advance, at 6 Rupees the first time, and 8 Rupees the second time, instead of 3 Rupees and 1 Rupee, as sworn to by the former *Witness*. We must prove another agreement.”

RUNJEET ROY *called up again.*

Deposed :

I know one *Huncha Aheda* ; he lives at Goadpore.—I remember an agreement written out, for advances made to him, for one biggah, by *Ranneepersaud*. I wrote his name, at his desire. He touched the pen, and I wrote his name, at his desire. *Galley Roy* and *Mihraan Gossain* were present, on that occasion. *Galley's* name in the paper, No. 2, is written *Lunta*, by me, through mistake. This paper, No. 2, * is the paper, which I so signed for *Huncha Aheda*, at his desire ; and, to which I signed the *Witnesses* names, by their desire, although *Galley's* name is written *Lunta*, by a mistake of mine.

RUNJEET ROY.

* see Exhibit No. 2, in Appendix.

HINCHA AHEEA *called and sworn.*

Deposed :

I am a cultivator of land.—I received advances from *Rajput*, for cultivating Indigo. —The advances were Mr. Wilkinson's. *Bannepersaul* had nothing to do with these advances. Mr. Wilki son is an English gentleman ; he is the agent and manager for *Mr. Crommelin*. I received three Rupees for one biggah, in Assam, two years ago. An Agreement was signed by *Rajput*, for me, touching the pen. He is the person, who immediately ordered the money in hand, and who witnessed the whole transaction.

his
HINCHA \approx **AHEEA**,
mark.

GALLEY ROY *called up again.*

Deposed :

I remember *Hincha Ahchea* making an Agreement, respecting the cultivation of Indigo. I am a Witness to it. —It was in Assam. —I do not recollect how many years ago. It was for three Rupees ; which he took for one biggah. *Rajput Roy* wrote my name, as a Witness. He did so, by my desire. I can neither read nor write.

his
GALLEY \approx **ROY**,
mark.

—It being deemed the most convenient course, to prove the damage in each particular case,

progressively as the Agreements were proved ;

HINCHA AHEEA was called again ;

And deposed :

In consequence of the Agreement, I cultivated that one biggah of land mentioned in it. When I executed that Agreement, I was in possession of that one biggah of land. In Cartick, following that Agreement, the Indigo had attained the height of my knee, when *Rughoobur Dyal*, a Police Officer, came to our village ; where he staid three days, and gave out, that whoever left a single leaf of Indigo in his field, would have to pay a fine of fifty Rupees, and go to Jail. In consequence of this, *Galley Roy* and others of our village ploughed up their Indigo fields, and I ploughed up mine. *Rughoobur Roy* is a servant in the Police there ; but, what his denomination is, I do not know. *Rughoobur Dyal* was a Darogah himself. I was told, that I should have to pay a fine of fifty Rupees, and go to Jail, if I did not plough it up ; and, therefore, as others ploughed up their's, I ploughed up mine. Whilst I was ploughing up my field, *Rughoobur* was at Kissendospore. He staid there three days. Kissendospore was a musquet-shot from my field. *Rughoobur Roy* gave these orders, in both these villages, viz. in Kissendospore and Goadpore ; and, then went to Gamateh. The Police Officer, *Rughoobur*, staid three days at Kissendospore, to have the fields ploughed

up. Whilst I was ploughing up my field, *Rughoobur* was in the village *Kissendossore*, which is adjoining to my field. Whilst I was ploughing my field, he did not come in person:—he sent his *Chupprasee*, his own servant. The *Chupprasee* said, “Go on ploughing from this day. I will return again three days hence, and lodge in Jail every person, in whose field I find a single plant standing, and he will have to pay a fine of fifty Rupees.” I finished my field, in the three days.—The Indigo Plant was sown in *Assia*, and ploughed up in *Cartick*.—It was sown about the middle of *Assia*, and ploughed up in the beginning of *Cartick*.—The first cutting of Indigo plant usually takes place, in that District, in the latter end of *Cartick*, and the second cutting in the coming *Asser*. If my field had not been ploughed up, I would have cut that Indigo, in the latter end of *Cartick*. I would have cut it, in about ten days, had it not been ploughed up. It is fit for cutting, in about six weeks after it is sown. My next cutting would have been after *Asser* of the cutting year, after the rain had fallen. About a month and a half elapsed, from the writing of the Agreement, until the time I ploughed up the Indigo.—It was the cold weather, when I ploughed up the field.

Mr. FRANKSON “It is needless, My
 “ Lords, to go on with this *Witch* story;—for, he
 “ proves a *Trespass*, eight months before Mr.
 “ AHMUTY’s order was issued.”

The same *Witness*, on cross examination by Mr. SMITH and the Court, further stated :

Mr. Wilkinson has got back his three Rupees, that I received from him. He got it in Indigo, which I planted in the ensuing Assaur, and delivered at the rate of six bundles in the Rupee,—and, in that way, the three Rupees were thus repaid to him. The Indigo, which I ploughed up, was thrown away, and destroyed ; and I sowed Barley in its place. Whatever loss arose from the ploughing it up, was my loss.

his
HINCHA X AHEEA,
mark.

SOOPHUL PATTUCK *called and sworn.*

Deposed :

I am a cultivator of the ground at Nizamabad. I made an Agreement, about advances for Indigo, about two years ago.—In consequence of that Agreement, I sowed Indigo. About ten months after this, *Rughoobur Dyal* came and said, that there was an order against the crop of Indigo being continued ; and that, whoever continued it, would be liable to a fine.—I do not recollect the month, in which I made the Agreement — *Ranjit Roy* signed the Agreement for me, by my desire. *Soophul Roy* was a witness to that Agreement. I do not recollect, who else were witnesses to it.—The Agreement was, for two biggahs and a quarter ; for

which I received six Rupees. I made the Agreement to *Bannepersaud*. — *Rughoobur Dyal* came to me in Srabon, two years ago. When he came, he said, that whoever had Indigo would be liable to sue, and that no one must either sow or cultivate Indigo; that, if it remained, they would be liable to sue. In consequence of what he said, I ploughed up my field. Whilst ploughing up my field, *Rughoobur* was at Gunateah. He had taken Mutchulkas from us, that we would plough up our fields. We ploughed up our fields, after he had taken these Mutchulkas and gone away. These Mutchulkas were taken, in the name of *Rughoobur Dyal*. *Galley Roy* was a party to the Mutchulkas. We gave separate Mutchulkas. There were Chupprasees with *Rughoobur*. — Whilst ploughing up our Indigo, I did not see any Chupprasees. I did not plough up the field voluntarily; — I had given a Mutchulka. I did not give the Mutchulka voluntarily. I and the others gave a Peon two annas for diet-money. The Peon was *Rughoobur Dyal's*. We paid the money to him, as diet-money, by *Rughoobur's* desire.

Cross Examined by MR. STRETTELL, (junior Counsel for the Defendant.)

I know *Hincha Ahcca*, the last Witness. The six Rupees, which I received, I have paid back, by delivering Indigo in lieu of it next year. I delivered the Indigo to *Bannepersaud*;—so that, the loss of ploughing up the ground was my

loss. *Banncepersand* suffered loss also, in not having the Indigo that year, although he had it the next. The loss of the plant was mine. I repaid the money, without interest.

his

SOOPHUL X PATTUCK.
mark.

RUNJEET ROY *called up again.*

Deposed:

I know *Soophul Pattuck*. I know the land he cultivated in Indigo for Mr. Crommelin, in Srabon, 1807.—*Rughoobur Dyal* came, and directed him to plough it up.—*Rughoobur Dyal* took a Mutchulka, (an agreement in the nature of a recognizance,) from *Soophul Pattuck*, at Gunateah, in my presence, and directed him to plough it up; in consequence of which, he did plough it up. No person of *Rughoobur's* attended at the *Pattuck's* field, to see it ploughed up. One Chupprassee went to Goadpore, to cause the fields there to be ploughed up. He did not get any diet-money, to my knowledge.

Cross Examined by Mr. SMITH.

I have lived with *Mr. Crommelin* for three years, ever since he commenced the Indigo manufactory. This is the third year, since he began to make Indigo. He did not begin it, before the date of these Agreements I have spoken of. He first began making advances, in Assin, 1806; and his Indigo Godowns were completed, in 1807. They were completed, in

Strabon, 1807. The Indigo, for which these advances were made, was to be manufactured at these Godowns ; but, the Indigo was ploughed up. The Godowns or Factories were in the Zillah of Gorukpore. There were seven Godowns, or Indigo Works. The word Godown in Gorukpore, means a Manufactory for Indigo. Mr. Crommelin had a Godown about a coss from Goadpore. It is necessary to make advances for cultivation, near the Factory, about a coss or two coss distant from the Godown. Mr. Crommelin has these Factories still.

Examined in reply, by MR. FERGUSSON.

I do not know of Mr. Crommelin's having any Indigo Godowns, in any other Zillah.

RUNJEET ROY.

The same Witness called up again.

I look at the paper now produced, and marked No 4 *. This is an Agreement by Gomangcer Gosayn, for a biggah and a half of Indigo. It is signed by me at his desire, and it is witnessed by Soophul Pattuck and Kisno Dyal, whose names are also written by me, at their request.—The biggah and a half of ground, mentioned in this Agreement, was sown with Indigo by Gomangcer Gosayn, and was afterwards ploughed up by him, by the order of Rughoobur, who took an engagement from

Gomangeer, and sent a Chupprassee to see it ploughed up.—I look at the paper now produced, and marked No. 5.* This is an Agreement by *Loutun Roy*, for two biggahs, signed by me, in his name, at his desire, and witnessed by me.—I look at the Agreement now produced, and marked No. 6.† This is an Agreement, executed by *Muznoo Ahir*.

Cross-Examined by MR. SMITH.

Gomangeer has repaid the advances made to him, by planting Indigo and delivering it next year.—*Loutun Roy* and *Muznoo* have also paid back their advances in the same way. *Loutun Roy* had only sown one biggah and two biswas of the ground, for which he had engaged. I saw it.—The ground was, after the Indigo was sown, ploughed up. *Gomangeer* sowed a biggah and a half, which were ploughed up; and *Muznoo* sowed three biggahs, all which were ploughed up by the direction of *Rughoobur*, who took engagements and sent Chupprassees to see it done.—The lands of these three persons were ploughed up, in my presence. I saw it done. There was a Chupprassee present, a Juanpore man. I saw him there at the time. He caused the ploughs to be set at work, and then went away. That Chupprassee was a Chupprassee of the Police at Azimghur.

* See Exhibit, No. 5, in Appendix.

† See Exhibit, No. 6, in Appendix.

Rughoobur had two Chupprassees with him. *Jaoo* was a Chupprasseec;—he staid with *Rughoobur*, when the Mutchulkas were taken.—When the Mutchulkas were taken from *Goman-geer*, *Loutun Roy* and *Muznoo Ahir*, at *Kissendospore*, *Jaoo* was present.

RUNJEET ROY,

HURDIAL SING called and sworn.

This Witness, being examined by MR. LEWIN, deposed :

I am a Moonshee, in the service of MR. BIRCH. In Assaur 1213, I was in the service of *Joygopaul Paurch*, Tehseeldar of the Pergumah Nizamabad. *Joygopaul Paurch* had the charge of the Police. *Ameer Khan* acted as Police Darogah on his behalf, and I as Mutsuddee in the Police Department. On the day a Perwannah respecting Indigo came to *Joygopaul Paurch*, I was not in the employ of the Police; but returned to it again, on the 20th or 22d July. *Joygopaul Paurch* then informed me, that a Perwannah respecting Indigo had come from *Mr Ahmuty*, who was the Judge at Gorukpore; which Perwannah was in the hands of the Mutsuddees; and directed me, to inform myself of the contents, and take a copy of it, and depute Police Sepoys over the Zemindars who had cultivated Indigo, and have them brought and produce them before *Mishatab Roy*, who was his Dewan, that he might take Mutchulkas

from them. He also directed me, to depute Sepoys, and to urge individuals to dig up Indigo which they had cultivated, and to sow something else, and to give the Sepoys directions not to suffer Indigo to remain in the fields on any account. I know a person, named *Bulwant Sing*, the Zemindar of Kurtapore. I did not give him any directions. I went to the village of Kurtapore. At the time I arrived there, the Indigo in his fields was in the act of being dug up. He said something to me; in answer to which, I desired him not to leave a particle of it, but have it all dug up. There was a Sepoy standing there, at the time. He was a Sepoy belonging to *Joygopaul Panreh's* Cutcherry, for the collection of revenue. *Bulwant Sing* did not willingly plough up his land. He did it by compulsion:—there was a Sepoy standing over him.—A man, named *Monohur Daas*, had an Indigo field at a place called Elean. It was also ploughed up. I know the Cutcherry seal of *Joygopaul Panreh*. I look at the paper now produced and marked No. 7,* and the paper now produced and marked No. 8† The seals to these two papers respectively, are the Tehseeldarce seals of *Joygopaul Panreh's* Cutcherry.

Cross-Examined by MR. STRETTELL.

Joygopaul Panreh was the Police Darogah of Nizamabad. He was also the Tehseeldar.

* See Exhibit, No. 7, in Appendix.

† See Exhibit, No. 8, in Appendix.

Amcer Khan acted as his Deputy Darogah. The villages I have mentioned, are in Nizam-bad.

HURDIAL SING.

The Dustucks* of the Police Darogah, (proved by the last Witness.) directing the cultivators to root out their Indigo, were here read by the *Clerk of the Papers*.

To save the trouble of examining more Witnesses, the Counsel for the Defendant consented to admit the execution of the Agreements to cultivate Indigo, produced on behalf of the Plaintiff; on condition, that the opposite party should also admit, that the advances made to the Ryots under these Agreements, had been repaid to the Plaintiff in the following year, by delivery of Indigo.

ADMISSIONS TAKEN ON BEHALF OF THE PLAINTIFF AND THE DEFENDANT.

In the Supreme Court of Judicature, at Fort William in Bengal, this Nineteenth day of July, in the year of Our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD TERM, 1809.

Charles Russell } *Mr. SMITH*, Advocate for
Crommelin, } *John Ahmuty*, the Defendant
 versus } in this cause, admits for and
John Ahmuty. } on the behalf of the said Defendant, that the Agreement now produced,

see Exhibits, No. 7 and 8, in Appendix.

and marked No. 3,* was duly entered into by the said *Soophul Pattuck*; and that the same was executed by the said *Soophul Pattuck*; and that, at the time of executing the same, the ground mentioned in the said Agreement, was in the possession of the said *Soophul Pattuck*.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits for and on the behalf of the said Plaintiff, that, after the ploughing up of the Indigo sown upon the ground, under the above Agreement No. 3, the said *Soophul Pattuck* did repay to the Plaintiff the advances made to him under the said Agreement, and that it was so repaid by the said *Soophul Battuck's* delivering Indigo to the Plaintiff, in the following year after it had been so ploughed up.

A. MACTIER,

Clerk of the Depositions.

In the Supreme Court of Judicature, at Fort William in Bengal, this Nineteenth day of July, in the year of our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER 'THIRD
TERM, 1809.

Charles Russell }
Crommelin, } MR. SMITH, Advocate for
 } John Ahmuty, the Defendant
 } in this cause, admits for and
John Ahmuty. } and on the behalf of the

said Defendant, that the Agreement, now produced, and marked No. 4, * was duly entered into and executed by *Gosayn Gomangeer*; and that, at the time of executing the said Agreement, the Grounds mentioned in the said Agreement, were in the possession of the said *Gosayn Gomangeer*.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits, for and on the behalf of the said Plaintiff, that, after the ploughing up of the Indigo, sown under the above Agreement No. 4, * the said *Gosayn Gomangeer* did repay to the Plaintiff in this cause, the advances made to him under the above Agreement; and, that he did repay the same, by delivery to the said Plaintiff Indigo, on the following year, after it had been so ploughed up.

A. MACTIER,

Clerk of the Depositions.

* See Exhibit No. 4, in Appendix.

In the Supreme Court of Judicature, at Fort William in Bengal, this Nineteenth Day of July, in the Year of our Lord Christ, One Thousand Eight Hundred and Nine.

COURT OF PLEAS.

{ SITTINGS AFTER THIRD
TERM, 1809.

Charles Russell } Mr. SMITH, Advocate for
Crommelin, } John Ahmuty, the Defendant
versus } in this cause, admits for and
John Ahmuty. } on the behalf of the said De-
fendant, that the Agreement now produced and
marked No 5, * was duly entered into and ex-
ecuted by *Loutun Roy*, and, that, at the time of
executing the said Agreement, the Grounds
mentioned therein were in the possession of the
said *Loutun Roy*.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits for and on the behalf of the said Plaintiff, that, after the ploughing up of Indigo, sown under the above-mentioned Agreement No. 5,* the said *Loutun Roy* did repay to the Plaintiff in this cause the advances made to him under the above Agreement; and, that he did repay the same, by delivering to the said Plaintiff Indigo, in the following year, after it had been so ploughed up.

A. MACTIER,

Clerk of the Depositions.

* See Exhibit No. 5, in Appendix.

In the Supreme Court of Judicature, at Fort William in Bengal, this Nineteenth day of July, in the Year of our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. } SITTINGS AFTER THIRD
TERM, 1809.

Charles Russell } MR. SMITH, Advocate for
Crommelin, } John Ahmuty, the Defend-
versus } ant in this cause, admits, for
John Ahmuty. } and on the behalf of the said
Defendant, that the Agreement now produced,
and marked No. 6,* was duly entered into and
executed by Muznoo Ahir, and that, at the time
of executing the said Agreement, the Grounds
mentioned therein were in the possession of the
said Muznoo Ahir.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits, for and on the behalf of the said Plaintiff, that, after the ploughing up of the Indigo, sown under the above-mentioned Agreement No. 6, * the said Muznoo Ahir did repay to the Plaintiff in this cause, the advances made to him under the above Agreement, and, that he did repay the same by delivering to the said Plaintiff Indigo, in the following year after it had been so ploughed up.

A. MACTIER,

Clerk of the Depositions.

* See Exhibit No. 6, in Appendix.

In the Supreme Court of Judicature, at Fort William in Bengal, this Nineteenth day of July, in the Year of our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD
 { TERM, 1809.

Charles Russell } Mr. SMITH, Advocate for
Crommelin { John Ahmuty, the Defendant
 } in this cause, admits, for and
 } on the behalf of the said
John Ahmuty. } Defendant, that the Agreement now produced,
 } and marked No. 9,* was duly entered into
 } and executed by *Bulwant Sing*; and that, at
 } the time of executing the said Agreement, the
 } Grounds mentioned therein were in the possession
 } of the said *Bulwant Sing*.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits, for and on the behalf of the said Plaintiff, that, after the ploughing up of the Indigo, sown under the above-mentioned Agreement No. 9,* the said *Bulwant Sing* did repay to the Plaintiff in this cause, the advances made to him under the above Agreement, and that he did repay the same by delivering to the said Plaintiff Indigo, in the following year after it had been so ploughed up.

A. MACTIER,

Clerk of the Depositions.

In the Supreme Court of Judicature, at Fort William in Bengal, this Nineteenth day of Juny, in the Year of our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. } SITTINGS AFTER THIRD TERM, 1809.

Charles Russell } Mr. SMITH, Advocate for
Cromwellin } John Ahmuty, the Defendant
versus } in this cause, admits, for and
John Ahmuty, } on the behalf of the said Defendant, that the Agreement now produced, and marked No. 10,* was duly entered into and executed by Soobungram Pattuck; and that, at the time of executing the said Agreement, the grounds mentioned therein, were in the possession of the said Soobungram Pattuck.

A. MACTier,

Clerk of the Depositions.

The admissions having been read, it was remarked by the Court; that the injury set forth by the Plaintiff amounted merely to a speculative loss, arising from the delivery of the Indigo in one year instead of another. There was no direct loss by trespass *vi et armis*. There was evidence indeed of proceedings highly oppressive to the cultivator; and which, whether imputable or not to the Defendant, certainly attached blame somewhere. But, such evidence did not go at all to sustain an action like the present.

* See Exhibit, No. 10, in Appendix.

JULY 20, 1809.

The Court having adjourned the further hearing of the cause until this morning, the Counsel for the Plaintiff proceeded to adduce additional Witnesses, for the purpose of proving the value of the Indigo-weed destroyed.

The first Witness called was RAMZAN KHAN.

This witness was examined by Mr. FERGUSON ; and deposed as follows :

I took advances for the cultivation of Indigo,—I do not recollect the year,—the month was Assin. In Srauhon, two years ago, I was offered ten Rupees per biggah by Dyers, for the Indigo, as it stood in my field. They told me, that, if I would speak to *Joygopaul Panrch*, and get the cutting of it down postponed for a short time, that they would take it at ten Rupees per biggah. They wished it postponed for ten days. They would have cut it down, in that ten days. They would have got through the cutting it down, in ten days. It was then ripe and fit for cutting. In consequence of this, I went to *Joygopaul's* Cutcherry, with the Dyer and a Chupprasse of *Joygopaul Panrch's*, who had come to cause the Indigo-field to be dug up; and, I informed *Mahuttub Roy*, *Joygopaul Panrch's* Dewan, of the proposal made to me by the Dyer; upon which, *Mahuttub Roy*

said, "He (meaning me) wishes to keep his Indigo standing in his field; take a Mutchulka from him, that he will remove it all and sow barley or something else." A Mutchulka was accordingly taken from me, by *Punchum Loll*, the Gomastah of *Santeram Canongoe*. They did not allow me the ten days, to cut down the Indigo. I represented to *Mihrbun Sing*, that my plantation was extensive, and that I could not procure a sufficiency of people to dig it up: upon which, *Mihrbun Sing* sent a Dustuck to *Ukhtear Sing*, the Zemindar at Shaikpoor, stating, that Indigo was still standing in his Zemindarree, and desiring him to take steps to have it removed. A Peon of *Joygopaul Panrch's* took this Dustuck to *Ukhtear Sing*; who, on receiving the Dustuck, came with the Chuprassee to me, and asked me, what all this clamour about the Indigo meant. I told him, that I did not know; that it was a matter between Gentlemen; that I was required to dig up my Indigo, but had not the means of so doing. *Ukhtear Sing* said, that he would not cause it to be dug up;—that *Joygopaul Panrch's* man might do so: all that he would do, would be, to furnish Coolies. This he did; and *Joygopaul Panrch's* man took them to my field, and had it dug up. They began, upon the day the Mutchulka was written, and were five days in digging it up. I had eleven biggahs in cultivation,—eight and a half fit for cutting,—the rest about six inches high. This Chupprasse

was not a common Chupprasee, but a Sepoy belonging to the Suwarree of *Joygopaul Panreh*, a Bundelah. The Sepoy began ploughing up the small Indigo, on the very day the Mutchulka was signed, when I asked them to postpone the digging it up; and, he began cutting down the grown-up Indigo, the next day.—There were two Sepoys, Bundelabs. They were not Soldiers; but armed Peons, Bundelabs.

Cross-Examined by MR. SMITH.

My lands were situated in Shaikpoor, in Nizamabad; that is, about 14 coss from the River Dewah. My field was about a quarter of a coss from the Plaintiff's Godown.—The ripe Indigo, when cut down, remained on the field until it became dry, when the people took it away; for, finding it was lost to me, after ploughing it up, I sowed Barley. It was the season for Barley. The Indigo was cut down in Scabon, and the Barley was sown in Cartick,—the ground being prepared in the intermediate time. The advances I received from the Plaintiff, I repaid to him next year in Indigo.—I was not sued by the Plaintiff, for these advances.—I received thirty-three Rupees in advance. In the ensuing year, I delivered Indigo to the value of forty-seven; and received credit for thirty three (the balance against me of the former year,) and fourteen Rupees in cash. I was not present, when my Indigo was

ent, in the succeeding year. People came from *Mahuttub Roy* three times, to demand payment, for cutting down the Indigo by *Joygopaul Paurch's* people ; but I refused to pay it.

Examined in reply, by Mr. FERGUSSON.

I did not pay any penalty, for not having performed my Agreement ; nor did I pay any Interest on the advances I had received.

his
RAMZAN ~~X~~ KHAN.
mark.

A. MACTIER,
Clerk of the Depositions.

ADMISSIONS TAKEN ON BEHALF OF THE PLAINTIFF AND DEFENDANT.

In the Supreme Court of Judicature, at Fort William in Bengal, this Twentieth day of July, in the year of our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD
 TERM, 1809.

Charles Russell { MR. SMITH, Advocate for
 Crommelin, *John Ahmuty, the Defendant*
 versus { *in this cause, admits, for and*
John Ahmuty. { *on the behalf of the said De-*
 fendant, that the Agreement now produced, and
 marked No. 11, was duly entered into and*
 executed by Ramzan Khan ; that, at the time
 of executing the said Agreement, the grounds
 mentioned therein were in the possession of the

* See Exhibit, No. 11, in Appendix.

said *Ramzan Khan* : and, he further admits, that Indigo was sown by the said *Ramzan Khan*, under the above Agreement ; and, that the same was afterwards, in the month of Erabon, following the date and execution of that Agreement, dug up by the orders and directions of *Rughoobur Dyal* and *Joygopaul Panreh*, in the manner mentioned by the Witnesses in this cause.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits, for and on the behalf of the said Plaintiff, that, after ploughing up the Indigo, sown under the above-mentioned Agreement No. 11,* the said *Ramzan Khan* did repay to the Plaintiff, the advances made to him under the above Agreement ; and, that he did repay the same, by delivering to the said Plaintiff Indigo, in the following year after it had been so ploughed up.

A. MACTIER,

Clerk of the Depositions.

* See Exhibit No. 11, in Appendix.

In the Supreme Court of Judicature, at Fort William in Bengal, this Twentieth day of July, in the Year of our Lord Christ, One thousand Eight hundred and Nine.

COURT OF PLEAS. } SITTINGS AFTER THIRD TERM, 1809.

Charles Russell } *MR. SMITH, Advocate for*
Crommelin, } *John Ahmuty, the Defendant*
 versus } *in this Cause, admits, for and*
John Ahmuty. } *on the behalf of the said De-*
 fendant, that the Agreement now produced, and
 marked No. 12, * was duly entered into and executed by *Gobindram Brahmun*, and that, at the time of executing the said Agreement, the Grounds mentioned therein were in the possession of the said *Gobindram Brahmun*;—and, he further admits, that Indigo was sown by the said *Gobindram Brahmun*, under the above Agreement; and, that the same was afterwards, in the Month of *Srabon* following the date and execution of the said Agreement, dug up, by the orders and directions of *Rughoobur Dyal*, and *Joygopaul Paureh*, in the manner mentioned by the Witnesses in this cause.

A. MACTIER,

Clerk of the Depositions.

MR. LEWIN, Advocate for the Plaintiff in this cause, admits, for and on the behalf of the said Plaintiff, that, after the ploughing up of the Indigo, sown under the above-mentioned Agree-

ment No. 12,* the said *Gobindram Brahmun* did repay to the Plaintiff the advances made to him under the above Agreement ; and, that he did repay the same, by delivering to the said Plaintiff Indigo, in the following year after it had been so ploughed up.

A. MACTIER, *Clerk of the Deposttions.*

BANNEEPERSAUD KHITTREE was then called and sworn.

Being examined by Mr. FERGUSSON, he deposed :

I am a Gomastah of the Plaintiff, *Mr. Crommelin*.—I have been in the Court-house, during the present trial of this cause. I know the lands of the different Witnesses, who have given evidence. I made the advances myself for the Indigo. When the Indigo was dug up, it was in two different states. Some, which had been sown in 1806, was breast-high and ripe ; the rest had been recently sown, and was about a foot high. The value of the full-grown plant was from five to ten Rupees per biggah, according to its quality. The other was too recently sown, to fix any value upon it. I know *Gobindram Brahmun*. His Indigo was ripe, and fit for cutting. It had been sown in 1806. He had ten biggahs of Indigo in that state. It is difficult, without a particular investigation, to say what was the value. It was ripe. Some of it was thick, and some of it thin. Taking the average, it may be valued at five

* See Exhibit, No. 12, in Appendix.

Rupees per biggah for the plant, exclusive of the seed. Had it not been destroyed, the seed would have been ready in four or five months after it was dug up. The value of the seed, would have depended upon the quantity. The quantity of seed, which each biggah produces, is very precarious. A maund, or a maund and a quarter, is a common average; but, much more is sometimes produced. The price of seed is also very precarious;—sometimes, from three to twelve Rupees per maund. The seed, which was sown, I purchased at twelve Rupees per maund. Five months after ploughing up the field, seed was seven and eight Rupees per maund.

Cross-examined by Mr. SMITH:

A biggah of land produces from eight to sixteen mounds of Barley; and the general value is a Rupee per maund: but, the value varies according to the season.—I cannot speak to my own knowledge, as to the Plaintiff, *Mr. Crommelin*, *Mr. Wilkinson* and *Mr. Stewart* being in partnership. In point of fact, *Mr. Stewart* used to manage the concern. There are no European gentlemen, who have manufactories in Gorukpore, except these concerns of *Mr. Crommelin*. *Mr. Baillie* shewed intentions of building a Manufactory; and he came to select a spot; but did not carry his intentions into effect.

I do not know of any other Gentlemen attempting, about that time, to establish a Manufactory of Indigo, except *Mr. Baillie*.—*Mr. Crommelin* did complain, in the Munsiff's Court, against individuals, who did not sow Indigo. He complained in 1808, for the balance of the three preceding years together. I know *Hincha Aheea*, *Gomangeer Gosayn*, and *Soophul Pattuck*. They were not sued. I know, they were not sued. I know, from hearsay, that they were not sued. They belong to a different godown, from that to which I belong.

Examined in reply by Mr. FEROUSSON.

None were complained against, except those, who, in the year 1808, did not proceed in the cultivation of Indigo, in the proper manner. The balances of 1806, 1807 and 1808, were of course recovered from them, in the suits instituted in 1808. These balances were recovered, even where the Indigo had been ploughed up. The persons examined as Witnesses, were debited with the balance of 1806. They did not make it good in 1807; as in that year the Indigo was destroyed. They made it good in 1808. The tenants made good all their balances in the year 1808, with some exceptions. There were still some balances in the favour of some; and, in others, an excess against them. The ripe Indigo, that was dug up in 1807, was what had been sown in 1806; and the new plant had been sown in 1807.—The tenants accounted to

the Plaintiff, for the advances of both these years, by delivery of Indigo in 1808, or in some other manner.

By the Court.

Gobindram's field, of which I have spoken, was at Lahoorea, near Azimghur, in Pergunnah Nizamabad, in the Zillah Gorukpore. Azimghur is subordinate to Gorukpore. Lahoorea is one coss from Azimghur. The Magistrate's Cutcherry is at the Town of Gorukpore, twenty-five or twenty-six coss from Lahoorea. Indigo seed is generally sown in July. It commences in July;—the labouring the ground commences, with the first fall of rain. The rains generally commence, about the end of June. The river Gograh is about seven coss from Lahoorea. It is necessary to cross it, before reaching the town of Gorukpore. *Mr. Crommelin* lived at Ghazeepore,—about twenty-four coss from Lahoorea.—There were no Indigo Manufactories belonging to European gentlemen, in Nizamabad, besides *Mr. Crommelin's*.

Mr. Crommelin began to build his godowns at Azimghur, in August 1805; and ended them, about the end of June 1807. I am not very conversant in the Fusillee year. I believe, it begins in Assin. I keep my accounts, in the Sumbut year.

ADMISSIONS TAKEN ON BEHALF OF THE DEFENDANT.

In the Supreme Court of Judicature, at Fort William in Bengal, this Twentieth day of July, in the Year of our Lord Christ, One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD TERM, 1809.

Charles Russell } *Mr. SMITH, Advocate for*
Crommelin, } *John Ahmuty, the Defendant,*
versus } *in this cause, admits, for and*
John Ahmuty. } *on the behalf of the said De-*
endant, that the Indigo Plant stated by the
Witnesses in this cause to have been dug and
ploughed up, under the orders and directions
of Rughoobur Dyal and Joygopaul Panrgh,
was of the value stated in the deposition of Ban-
nacepersaud Kittrec, taken on the behalf of the
Plaintiff in this cause ; and, he further admits,
that the Indigo Seed was of the value stated by
the said Bannacepersaud, in his said deposition.

A. MACTIER, Clerk of the Depositions.

In the Supreme Court of Judicature, at Fort William in Bengal, this Twentieth day of July, in the Year of our Lord Christ, One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD TERM, 1809.

Charles Russell } *Mr. SMITH, Advocate for*
Crommelin, } *the Defendant, admits, that*
versus } *the Plaintiff in this cause, was*
John Ahmuty. } *entitled, as Commercial Resi-*

dent, to trade on his own account, in the District of Gorukpore ; but, does not admit, that he was entitled to manufacture Indigo, without the permission of Government.

A. MACTIER,

Clerk of the Depositions.

In the Supreme Court of Judicature, at Fort William in Bengal, this Twentieth day of July, in the Year of our Lord Christ, One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD
TERM, 1809.

Charles Russell }
Crommelin, } Mr. SMITH, Advocate for
 } John Ahmuty, the Defendant
 } in this cause, admits, for and
John Ahmuty. } on the behalf of the said De-
fendant, that, on the 15th July 1807, a Per-
wannah was issued by the said Defendant, as
Magistrate of the Zillah Gorukpore ; and he
admits, that the paper now produced, and mark-
ed No. 13,* is a just and true copy of that
Perwannah so issued. And, he further, for and
on the behalf of the said Defendant, admits, that
Joygopaul Panrgh, Police Darogah of Pergun-
nah Nizamabad, did, on the 14th August 1807,
make a return to the above-mentioned Perwan-
nah, and that, in consequence of the said return,

* See Exhibit, No. 13, in Appendix.

the Defendant did, on the 27th September 1807, address an order to the said *Joygopaul Pan-rah*; and, he admits, that the paper now produced, and marked No. 14,* is a just and true copy of the said return of the 14th August 1807, and of the said order of the 27th September 1807. And he further admits, that the paper now produced and marked No. 15,† is a just and true copy of a letter written by *George Dowdeswell, Esq. Secretary to Government in the Judicial Department*, and sent and addressed to the said Defendant, as *Magistrate of Gorukpore*. And he further admits, that, on the 20th of June, 1807, the said Defendant did write, and address, and send to the said *George Dowdeswell, Esq., Secretary to Government in the Judicial Department*, a letter, of which the paper now produced and marked No. 16,‡ is a just and true copy; and, he admits, that the paper annexed to the said letter, signed "*F. Balfour, Collector*" and dated *Zillah Gorukpore, 12th June 1807*, is a just and true copy of *Mr. Balfour's* reply mentioned in the above-mentioned letter of the Defendant to *Mr. Dowdeswell*; and, he further admits, that the paper annexed to the said letter-bearing to be "Extract of a letter from the Secretary to the Government, dated 19th February, 1807," is a just and true Extract from the said letter of the 19th February, 1807.

* See Exhibit No. 14, in Appendix.

† See Exhibit No. 15, in Appendix.

‡ See Exhibit No. 16, in Appendix.

And further, for and on the behalf of the said Defendant, he admits, that, on the 29th June, 1807, the said *John Ahmuty*, as Magistrate of Zillah Gorukpore, did write, and address, and send to the said *George Dowdeswell, Esq.* Secretary to Government in the Judicial Department, a letter, of which the paper now produced, and marked No. 17,* is a just, true and correct copy. And he also admits, that, on the 9th July, 1807, the said *George Dowdeswell, Esq.* did write and address and send a letter to the said Defendant, as Magistrate of Gorukpore; and he admits, that the paper now produced, and marked No. 18,† is a just, true and correct copy of the said letter, so sent by the said *George Dowdeswell, Esq.*

A. MACTIER,

Clerk of the Depositions.

The Exhibits referred to in the last Admission, having been read by the *Clerk of the Papers*, the case was closed, on the part of the Plaintiff.

THE ADVOCATE GENERAL then addressed the Court, on behalf of the Defendant. He was willing, he said, to admit all that had been advanced, with regard to *Mr. Crommelin's* character. He believed *Mr. Crommelin* to be a highly respectable man. And he trusted, that he might be allowed the same claim, on the part

* See Exhibit No. 17, in Appendix.

† See Exhibit No. 18, in Appendix.

of *Mr. Ahmuty*. As to general merits, therefore, both parties so far stood on a par,—and on the only par which could be admitted on the present occasion.—It was not however the question of their general merits, that was now to be tried; but the subject matter of this cause. Looking at the proofs before the Court, he certainly did not find any thing indicative of the amiable qualities ascribed to the Plaintiff in private life. He saw reason to fear, on the contrary, that *Mr. Ahmuty* had been hardly treated; and in a manner not consistent with very honourable motives on the part of *Mr. Crommelin*, nor with very moral or religious motives, (for religion too, he understood, formed one of the excellent features in *Mr. Crommelin's* character.) On the point of law in this case, if he had that only to look to, he (*MR. SMITH*) should not detain the Court for ten minutes. For, he must go to school again, if the Counsel for the Plaintiff had not run foul of every thing, which, in an action like this, could ensure a nonsuit.—But, after the solemn imputations advanced by *MR. LEWIN*, he felt himself bound, in duty to the character of his client, to repel such an attempt to asperse it. *Mr. Ahmuty*, he need hardly say, was entitled to the same indulgence, in the interpretation of his official acts, which every public man, acting from his understanding, was accustomed to receive. Were he even to concede every thing, for which his friends on the opposite side contended, (and, if he did, he would not be fit for a special plead-

er's office,) the sum of the damage to be awarded, could not exceed two or three hundred rupees. It was for this Norfolk groat, not for any serious loss, that the Plaintiff had instituted this oppressive action. It was for this, that *Mr. Crommelin* had brought so many Witnesses from the other end of the Empire, and had caused the records of an Office for almost a whole year to be translated. This honourable and religious man,—he (*Mr. Smith*) did not speak in irony,—in a general acceptation, he sincerely believed him entitled to that character,—but, trying him in the present case by the principles of an English gentleman, he must say, that *Mr. Crommelin* stood here as an offender. It was obvious, that *Mr. Crommelin* could have no motive for coming into Court with such an immense apparatus of proof, but to oppress the Defendant ;—to publish an accusation against him, and then to load him with the costs of the suit.—Had he felt himself really aggrieved by the acts of *Mr. Ahmuty*, he might fairly enough have come forward, on the point of law, to question *Mr. Ahmuty's* right to prevent him from manufacturing Indigo, and to complain of the loss which he had sustained in consequence of such prevention. There would then have been grave matter for the consideration of the Court. But, this miserable fragment of a trespass,—what was it, but an admission, that he had no direct or legal ground of complaint?—He (*Mr. Smith*) must say, that it did *Mr. Crommelin* no honour ;

and that it was one of the few actions of his life, which he would have no reason to be proud of. He thought *Mr. Crommelin* had been ill-advised ;—(of course, he did not mean by his learned friends ; but, from what he had heard of *Mr. Crommelin's* character, he could not suppose, that such a course of proceeding had been generated in his own mind.)

The spirit of the Regulation of Government, under which *Mr. Ahmuty* had acted, did not go to prohibit the cultivation of Indigo in the Ceded Provinces, but to prohibit Europeans from engaging in that cultivation without the approbation of Government. Some time previous to the commencement of *Mr. Crommelin's* works, *Mr. Ahmuty* had been called away from the station of Gorukpore to Benares, and was absent there on duty for the space of nine months. It was during this interval, that the construction of the works was begun ; and, until his return, *Mr. Ahmuty* knew nothing of their existence. The Counsel on the other side appeared sensible, that *Mr. Crommelin* had to plead a good deal of indulgence, which he was not disposed to allow to *Mr. Ahmuty*, for a little ignorance of the law. But he (*MR. SMITH*) should shew to their Lordships, that *Mr. Crommelin* from the first well knew, and acted on the knowledge of the Regulation. He should shew, under *Mr. Crommelin's* own hand, that he actually did make an

application to Government; but, finding it was not likely to be successful, that he afterwards withdrew it.—He then thought of the expedient of making over his godowns to his own servant, and renting them from him. How *Mr. Crommelin* could suppose, as he himself had stated, that, by so doing, he neither directly nor indirectly infringed the Regulations of Government, was not for him (*MR SMITH*) to explain. There were theological distinctions, above the comprehension of lawyers. But, he certainly could not perceive any great distinction, between this system of renting and re-renting, and the direct mode of holding land. No Lawyer could ever have conceived a doubt, but that *Mr. Crommelin* was still the direct, or, at all events, the indirect holder of the Works in question. On his return to Gorukpore, *Mr. Ahmuty*, being informed of the concerns in which *Mr Crommelin* had engaged during his absence, addressed Government, in two letters, which he (*MR. SMITH*) should now read, requesting their instructions for his guidance on the occasion. [*Letter* read.*] In the opinion here expressed, relative to the policy of discouraging the cultivation of Indigo in Gorukpore, he (*MR. SMITH*) certainly did not concur. But that was a mere abstract question, on which a man, not particularly well versed in Adam Smith, might very excusably hold such an opinion. It

* See Exhibits, Nos. 16 and 17, in Appendix,

must be in the recollection of every one who heard him, the part that was taken by one of the most acute men and upright Judges that ever sat on the English bench, (the late Lord Kenyon,) in the hue and cry raised during the last scarcity in England against the forestallers and regraters. That distinguished character was at the very head of the mob on that occasion.—Such a deviation, therefore, from received political doctrines as the present, would not be thought very unpardonable in *Mr. Ahmuty*. In answer to this reference to Government, *Mr. Ahmuty* received such an explanation as might have been expected; namely, that *Mr. Crommelin*, in his private commercial transactions, must be considered subject to the same rules and restrictions, which had been established with respect to Europeans in general.* On the receipt of the reply to his first letter, *Mr. Ahmuty* issued the following Perwannah to the Police Darogahs of his district.—[*Perwannah read.*†] This Perwannah, he (MR. SMITH) readily allowed, was not very discreetly worded. It was a dangerous thing in such cases, to leave any thing to the interpretation or judgment of a Native Officer. In the exercise of authority in this country, he thought, that a man ought to go abroad like Gulliver in Lilliput, cautious lest he should do some mischief even with the lappets of his garments. But, at the same

* See Exhibits, Nos. 15 and 18, in Appendix.

† See Exhibit, No. 13, in Appendix.

time, he must confess, that Mr. LEWIN's horror, in representing these orders of Mr. AHMUTY as the acts of a Caligula or a Nero, did appear to him a little preposterous. Assuredly, this extreme sensibility for the sufferings of the Ryots was not a sentiment, in which *Mr. Crommelin* appeared to have partaken. The Perwannah went to the Darogahs; and one Jack in office thought fit to understand it, in its utmost latitude, as an order to root up by force all the Indigo which had been planted.—It was proved, he believed, that this man, *Joygopaul Panreh*, had caused the destruction of 21 biggahs of the weed. Other five or six Darogahs, to whom the same Perwannah was issued, had never thought of such an interpretation; but had contented themselves with exhorting the Ryots to dig up the Indigo, and cultivate something else. Had *Mr. Crommelin* chosen to take the damages on his own shoulders, even those Ryots, against whom *Joygopaul Panreh's* proceedings were directed, would have lost nothing. But, far from that, the whole value of the advances had been rigorously required of them in the succeeding year. And, he did think it a little cruel on the part of the Plaintiff, that he, being in possession of *Mr. Ahmuty's* counter-order of the 1st of August, should have taken no efficient step to rectify the misconstruction under which the Darogah was acting; but should have allowed the same proceedings to go on, until the 27th of September, when another counter-order appear-

ed. On the 20th of July, five days after the issue of his first Perwannah, *Mr. Ahmuty*, in consequence of the receipt of *Mr. Dowdeswell's* letter of the 9th of that month, issued another Perwannah. *Joygopaul Panreh* made his report on the 27th of July, stating, that he had ordered the Indigo fields to be dug up. This report had been received by *Mr. Ahmuty*, on the 31st of July; and, on the following day (the 1st of August,) his counter-order had been issued. [*Here, the letters addressed to the Secretary to Government in the Judicial Department*, in reply to those of Mr. Ahmuty, and the remaining Perwannahs issued to the Police Darogahs,† were read by the Clerk of the Papers.*] He could not think, that his friends on the other side had dealt very fairly by his client, in keeping back this order of the 1st of August, and producing that only of the 27th of September; as if *Mr. Ahmuty*, knowing of the improper proceedings of *Joygopaul Panreh*, had yet lain by for nearly two months, without interference‡. Not only, in point of fact, had *Mr. Ahmuty* issued a counter-order, so early as the 1st of August:—he had also, at the instance of *Mr. Crommelin's Vakeel*, addressed an intermediate order to the same effect, on the 9th of September.

* See Exhibits Nos. 15 and 18, in Appendix.

† See Exhibits Nos. 20, 21, 22, 23, and 24, in Appendix.

‡ From this passage to the end, the trial is compiled, exclusively, from the notes of one of the Advocates employed in the cause.

ber, to *Joygopaul Panreh*, and similar orders to all the other Darogahs of his district. As to the frivolous complaint of trespass, he (MR. SMITH) was very indifferent. These documents and observations were intended to shew, the unfairness of the Plaintiff's conduct in withholding his interference until the 27th of September. But *Joygopaul*, in his return to the Perwannah of the 9th of September,* denied having even urged any of the Zemindars to dig up their Indigo, subsequent to the receipt of the Perwannah of the 20th of July.

So much for the acts of *Mr Ahmuty*:—he should now touch a little on those of *Mr. Crommelin*. Was it, we would ask, very creditable to him, who was the author of all this mischief, to exact from these unfortunate Ryots the repayment of all the advances, that had been made to them? *Mr. Crommelin* addressed a letter to Government, representing the loss which he had sustained from the interruption of his Indigo concerns: and Government in consequence granted him permission to carry on the manufacture in Gorukpore. That permission was intended as an indemnification for his loss; and, having obtained it, it was most unjust and illiberal, first to enforce this demand against the cultivators, and then to bring an action at law against *Mr. Ahmuty*. [*Here Mr. Crommelin's letter to Government was read.*†] This letter insinu-

* See Exhibit, No. 26, in Appendix.

† See Exhibit, No. 27, in Appendix.

ated, that *Mr. Ahmuty* had lain by for a space of eight months, and had offered no interruption to the construction of *Mr. Crommelin's* works, until they were nearly finished; an insinuation which was contrary to truth, and which the Plaintiff must have known to be so,—*Mr. Ahmuty*, during that interval, having been absent on duty at Benares. According to the statement given in this letter by *Mr. Crommelin* himself, the sum of the loss sustained by him, and for which he sought to recover damages by the present action, did not exceed, at the utmost, 150 biggahs of Indigo plant. And, of that loss, only 21 biggahs had been proved. If *Mr. Crommelin*, therefore, was really sincere in the declaration here made of the innocence of his intentions, he (MR. SMITH) could only say, that his discernment must have been strangely blinded, and his judgment impaired. The compliance of Government with his application ought to have satisfied him, and ought to have put an end at once to all retrospective actions. By that compliance he had already obtained his redress; and could have no justifiable motives for harrassing further, either the Defendant or the cultivators. For *Mr. Ahmuty*, he (MR. SMITH) asked nothing more, than a fair and candid construction of his acts.

With respect to the law of this case again, it was clear, he contended, that the agreement between *Mr. Crommelin* and the cultivators was nothing more than a mere contract. If it was

otherwise, if *Mr. Crommelin* was the proprietor of the Indigo plant in his own right, how, he would ask, came *Mr. Crommelin* to recover his balances? The Indigo was to be sold and delivered, at the rate of so many bundles per rupee; and the whole price was to depend upon the quantity so delivered. It was quite obvious therefore, that the property could not have passed to *Mr. Crommelin*, and that the agreement was in fact a mere executory contract, which left the party contracting at liberty either to cultivate or not to cultivate the Indigo, as he pleased,—provided, in the latter case, he paid the annexed penalty. When this contract was entered into, the Indigo was not yet sown, and had no substantial existence.

Here the ADVOCATE GENERAL concluded.

The only Witness called for the Defendant,
was ANJERE SING.

He deposed :

I am a Muttsuldee in the Foujdaree Department, in Zillah Gorukpore. I know Azimghur and Azimabad ;—they are both in the Zillah of Gorukpore. *Mr. Ahmuty* was Magistrate of Gorukpore, in the year 1807. In June 1805, *Mr. Ahmuty* quitted Gorukpore, and went to Benares, as a Commissioner on an enquiry into *Mr. Barton's* case. *Mr. Ahmuty* returned to Gorukpore, about the 20th or 23d of March, 1807.

CROSS-EXAMINED.

When *Mr. Ahmuty* quitted Gorukpore, he made over charge to the Register of the Court; ten or twelve days after which, *Mr. Fergusson* came as Acting Judge. The proceedings of the Acting Judge were not forwarded to *Mr. Ahmuty* at Benares;—his own acts were conclusive.

ANJERE SING.

The same Witness being called up again;

Deposed:

In the Foujdaree Court of Gorukpore, we used to write Perwannahs and deliver them to the Nazir. Looking at the papers now produced, and marked No. 20, No. 21, No. 22, No. 23 and No. 24,* these are copies made from the copy-book of Perwannahs, the originals of which were issued through the Nazir to the different Police Darogahs. When these Perwannahs were issued, there were twenty-four Darogahs belonging to the Police of Gorukpore. Looking at the papers now produced, and marked No. 25 and No. 26,† these are copies of Reports made by Darogahs,—they are copies from the originals.—*Mr. Crommelin* has seven different Factories, in the district of Gorukpore. He had them in 1807. I know this only by hearsay.

* See Exhibits, Nos. 20, 21, 22, 23 and 24, in Appendix.

† See Exhibits, Nos. 25 and 26, in Appendix.

CROSS-EXAMINED.

Bannepersaud keeps the *Perwannah* book. He is a *Mutsuddee*, attached to the *Foujdarree* Court. The *Nazir* used to issue *Perwannahs*, immediately on receiving them, and to report his having done so on the next day. He used to report the same, to the Magistrate. The *Nazir* issued the *Perwannahs*, by delivering them to the *Darogahs'* *Vakeels*, who were in attendance. They were invariably issued on the same day they were delivered to the *Nazir*. When a *Perwannah* was ordered to be issued, as soon as it could be written out and a copy of it taken in the book, it was delivered to the *Nazir*. It was usual to give orders, that a *Perwannah* should be made out as soon as an order was passed. I cannot say, within what time the *Perwannahs* directed to *Joygopant Panreh* reached him. It depended on his *Vakeel*. He resided at a distance of 24 or 25 coss. If the *Perwannahs* were sent by dawk, they would reach him in a day; if by a messenger, they would reach him in two days. I know not, how they were sent. I do not know, how the *Vakeels* sent the *Perwannahs* to other *Darogahs*. I do not know, whether they were sent by dawk or by a messenger.

ANJERE SING,

ADMISSION TAKEN ON BEHALF OF THE
DEFENDANT.

In the Supreme Court of Judicature, at Fort-William in Bengal, this Twentieth day of July, in the Year of Our Lord Christ One thousand Eight hundred and Nine.

COURT OF PLEAS. { SITTINGS AFTER THIRD.
 TERM, 1809.

Charles Russell } Mr. LEWIN, Advocate for
Crommelin } the Plaintiff in this cause, ad-
 mits, for and on the behalf of
 versus } the said Plaintiff, that, on
John Ahmuty. } the 20th July, 1807, certain proceedings were
held in the Foujdaree Court of Zillah Goruk-
pore, before *Mr. John Ahmuty*, the Defendant
in this cause; and he admits, that the paper now
produced, and marked No. 19,* is a just, true,
and correct copy of such proceedings. And he
further admits, for and on the behalf of the said
Plaintiff, that, on the 20th day of July,
1807, a Perwannah was issued and directed by
the Magistrate of the Zillah Gorukpore, to all
Police Darogahs of the Foujdaree Court of
Zillah Gorukpore; and he admits, that the pa-
per now produced, and marked No. 20,† is a
just, true, and correct copy of such Perwannah.
And he further admits, that, on the 23d July,
1807, another Perwannah was also issued by the
said Magistrate of the said Zillah Gorukpore,
directed to all the Police Darogahs of the said

* See Exhibit, No. 19, in Appendix.

† See Exhibit, No. 20, in Appendix.

Zillah ; and he admits, that the paper now produced, and marked No. 21,* is a just, true, and correct copy of such Perwannah. And he further admits, that, on the 1st August, 1807, a Perwannah was issued by the said Magistrate of the said Zillah, directed to *Joygopaul Panreh*, Police Darogah of Pergunnah Nizamabad ; and he admits, that the paper now produced, and marked No. 22,† is a just, true, and correct copy of such Perwannah. And he further admits, that, on the 9th September, 1807, another Perwannah was issued by the said Magistrate, directed to the said *Joygopaul Panreh* ; and he admits, that the paper now produced, and marked No. 23,‡ is a just, true, and correct copy of such Perwannah. And he further admits, for and on the behalf of the said Plaintiff, that certain proceedings were held in the said Zillah Court, before the said Magistrate, on the 9th September, 1807, and that present thereto another Perwannah was issued by the said Magistrate, directed to all the Police Darogahs of the said Zillah ; and he admits, that the paper now produced, and marked No. 24,§ is a just, true, and correct copy of such Perwannah. And he further admits, that the said *Joygopaul Panreh* did make a return to the said Magistrate of the said Zillah, to the Perwannah issued on the 20th

* See Exhibit, No. 21, in Appendix.

† See Exhibit, No. 22 in Appendix.

‡ See Exhibit, No. 23, in Appendix.

§ See Exhibit, No. 24, in Appendix.

July, 1807, and that the said return bears date the 27th July, 1807; and he admits, that, in consequence of the said return, the said Magistrate did issue a certain order, on the 1st August, 1807; and he also admits, that the paper now produced, and marked No. 25,* is a just, true, and correct copy of the said return, and order issued in consequence thereof. And he further admits, that, on the 23d October, 1807, the said *Joygopaul Panreh* did make a return to the said Magistrate, to the Perwannah issued on the 9th September, 1807; and he admits, that the paper now produced, and marked No. 26,† is a just, true, and correct copy of the said return, so made by the said *Joygopaul Panreh*. And he further admits, for and on the behalf of the said Plaintiff, that he, the said Plaintiff, did, on the 9th October, 1807, write, and address, and send a certain letter to the *Right Honorable Gilbert, Lord Minto*, Governor General in Council; and he admits, that the paper now produced, and marked No. 27,‡ is a just, true, and correct copy of the said letter. And he further admits, for and on the behalf of the said Plaintiff, that, on the 16th October, 1807, *George Dowdeswell*, Esq. Secretary to Government in the Revenue Department, did write, address, and send a certain letter to the said Plaintiff; and he admits,

* See Exhibit, No. 25, in Appendix.

† See Exhibit, No. 26, in Appendix.

‡ See Exhibit, No. 27, in Appendix.

that the paper now produced, and marked No. 28,* is a just, true, and correct copy of the said letter. And he further admits, that, on the said 16th October, 1807, the said *George Dowdswell, Esq.* as Secretary to Government in the Judicial Department, did write, address, and send a certain letter to the Magistrate of Gorukpore; and he admits, that the paper now produced, and marked No. 29,† is a just, true, and correct copy of the said letter. And he, lastly, for and on the behalf of the said Plaintiff, admits, that, on the 27th October, 1807, a certain Perwannah was issued by the Magistrate of the said Zillah, addressed to the Police Darogahs of the said Zillah; and he admits, that the paper now produced, and marked No. 30,‡ is a just, true, and correct copy of such Perwannah.

A. MACTIER,

Clerk of the Depositions.

All the Exhibits referred to in the above Admission, which had not been read in the course of the pleadings, having first been read by the *Clerk of the Papers*, MR. LEWIN was heard shortly in reply.

He hoped, their Lordships would not conceive, that the damage actually sustained was confined to those cases which had been proved

* See Exhibit, No. 28, in Appendix.

† See Exhibit, No. 29, in Appendix.

‡ See Exhibit, No. 30, in Appendix.

in Court. To shew that it was not, he need only observe, that *Joygopaul Panreh*, though he had instructions to desist from rooting out the Indigo, did not attend to them. This was evident from his return of the 14th of August ; wherein he said, that he was still going on. The imputation of malice, therefore, which had been cast upon the Plaintiff, under the supposition that he had sustained no real loss, would appear, he trusted, entirely void of foundation. He (MR. LEWIN) must confess, that, when this case was first mentioned to him, he had considerable doubts as to the point of law : but, after being pressed frequently on the subject by his client, and having considered all the circumstances more minutely, he came to think, as he now did, that it was a case, in which an action would lie,—that the articles in question were goods and chattels, and that the property of them was vested in the Plaintiff. Here MR. LEWIN cited, in support of his doctrine, a law authority ;*—which shewed, that a man could grant and make over all the wool, which might grow on the sheep which he had bought, though not such as might grow on the sheep, which he might thereafter buy. The case was that of a covenant, by which the lessee became entitled to carry away corn growing at the end of the term. It was there said, that the property and right of the corn passed,—there being both covenant and grant. If a man sell his

* 5 Lon. 213. *Hitchcock and Harvey*.—*Shephard's Touchstone*, fol. 95.

trees, and then cut them down, the vendee shall have the trespass.†

Here the pleadings closed, and the Court proceeded to give judgment.

The CHIEF JUSTICE observed ; that the parties had been so anxious to lay their case before the Court, that he had indulged them with a hearing. But, in his decision, he should look only to the declaration and the instrument. The agreement negatived altogether the idea of property or possession. Till delivery, the Indigo plant could not be the property of the Plaintiff. Had it been so, the loss must have been his also. But the Plaintiff was not bound by the agreement, to sustain any loss that might occur. He was also of opinion, that, although a crop of grass might be sold before it was grown, it was not, whilst growing, goods and chattels. Corn growing could not have been distrained, before the statute. This question, however, did not at all affect the present cause, as brought before the Court. It had been aptly enough said, that the Plaintiff was between Scylla and Charybdis. If the Indigo weed was his, he had violated the law, by holding property contrary to the regulations of Government :—if the Indigo weed was not his, then there was no foundation for this action of Trespass. His Lordship was of opi-

nion, that the weed belonged to the tenants. With respect to the conduct of the parties, he should only observe, that, while the one appeared too eager to evade the law, the other was perhaps too eager to enforce it. As soon however, as the Defendant found any bad consequences resulting from his proceedings, he had immediately endeavoured to put a stop to them.

SIR JOHN ROYDS was of opinion, that the agreement between the Plaintiff in this cause and the cultivators, was only a mere executory contract. The cases which had been cited, to shew that the property of Indigo had passed to the Plaintiff, he did not think at all applicable. In those cases, the object was fixed and certain; but here, it was not so.

SIR WILLIAM BURROUGHS was of opinion, that the Indigo plants, while growing, were not goods and chattels. The doctrine of emblements did not contravene this. Admitting however that it were otherwise, he had doubts, whether *Mr. Ahmuty*, under the words of the order issued by him, could be considered as a Trespasser. It appeared, that one Officer only out of twenty had understood this order, as directing him to destroy the crop by force and arms. His Lordship conceived moreover, that, if the agreements did vest the property of the Indigo in *Mr. Crommelin*, that gentleman had acted in violation of the existing law.

as fixed by the regulations of Government. He could have no legal property therefore in the plant. And, if *Mr. Crommelin* had any fair cause of complaint, (which his Lordship thought, he had not,) this was not the mode in which he should have sought redress.

The Plaintiff was accordingly nonsuited.

FINIS.

APPENDIX.

APPENDIX.

EXHIBITS

PRODUCED AND READ,

ON BEHALF OF THE PLAINTIFF AND DEFENDANT,
IN THIS CAUSE.

No. 1.

AGREEMENT entered into by *GALLY ROY* and *SURPHUL ROY*, to cultivate each 1 Beggah of Indigo, on account of *Mr. CROMMELIN*. *

No. 2.

Agreement entered into by *HINCHU ANIA*, to cultivate 1 Beggah of Indigo, on account of *Mr. CROMMELIN*. *

No. 3.

Agreement entered into by *SOORHUL PATTUK*, to cultivate 2 Beggahs of Indigo, on account of *Messrs. CROMMELIN and STEWART*. *

No. 4.

Agreement entered into by *GOSAYN GOMANGERR*, to cultivate 1 Beggah of Indigo, on account of *Messrs. CROMMELIN and STEWART*. *

* The tenor of all these agreements being nearly the same, it has been thought unnecessary to insert them at length. The following may serve as a specimen of the whole.

No. 3.

I, *SOORHUL PATTUK*, inhabitant of Mouza Godhpoor, Tappa Cotha Perguuna Nizamabad, write:

No. 5.

Agreement entered into by LOWTUN ROY, to cultivate 2 Biggahs of Indigo, on account of Messrs. CROMMELIN and STEWART.

No. 6.

Agreement entered into by MUXNOO AHIR, to cultivate 3 Biggahs of Land, on account of Messrs. CROMMELIN and STEWART.

Witness, SOORHUT

ROY, in Godpoor.

Witness, KISSENDOSPOOR,

KISSENDOSPOOR.

Whereas I have of my own free will engaged unto Mr. CHARLES RUSSELL CROMMELIN and Mr. CHARLES STEWART, for the cultivation of two Biggahs of approved Land, of the first quality, to be measured by the long measurement, and for delivery by bundles, I engage as follows:

I will prepare the Land from the commencement of the rainy season to the 20th July, 1807, corresponding with 1211 Fulslee, in a suitable manner for Indigo, and take Indigo seed from the gentlemen, and sow the same and complete the weeding of the Indigo in due time. When the Indigo plant is ready, I will cut it according to the orders of the said gentlemen, and deliver six bundles per Rupee, to be measured with a cubit of five and a half cubits. If the plant be short, the bundles are to be joined by laying the plant Deyora, to be drawn together by one man with all his force. If I do not cut according to the gentlemen's order, and deliver by bundles, I will pay Ten Rupees per Biggah, in lieu of profit on the Indigo, or I will pay Three Rupees per Maund, for whatever quantity of Indigo seed I take for cultivation. I will deliver of the seed which is produced in my field to the above gentlemen, by the end of the Month of February; if I do not, the gentlemen may do as they please. —Whether I take Indigo seed for sowing or not, I am to be charged for the same at four seer or five seer per Biggah, in the account. —I am to receive advance at Three Rupees per Biggah.—two to be paid now, and one when I weed.—I will pay interest on the above amount down to June, making allowance for the same on the value of the bundles of Indigo.—If a balance is due to me, I will take the same at the time of settling accounts: if

No. 7.

TRANSLATION OF DUSTUCK, USED BY THE NAIB (MHUT-
TAR ROY) OF JOYGOPAL PANRIH, POLICE DARGAH
AND TEHSILDAR OF PERGUNNAH NIZAMABAD, UN-
DER THE SEAL OF THE TEHSILDAR.

Be it known to SHIRUN'S PATRUK:

I have heard that your Indigo is still standing; hearing
which astonishes me greatly. On seeing this chit, come
before me. You have committed a great fault, and it will
be reported to the Huzzoor (Magistrate.)

Dated 23d Jumma dil awal (1241).

(On the back.)

Four annas to be paid daily.

A true Translation,

W. C. BENGUEUR.

a balance is due to the Sudder, I will not take the same, with
Interest, from November to July of the following year,
by allowing credit for the same on the value of Indigo.
I will sell neither Indigo Plant or Seed, to any one else
without the gentlemen's orders; if I do, I will pay
Ten Sudda Rupees per man, in lieu of bundle of Indigo.
If I cultivate a less quantity of ground than I have
agreed, and do not sow it for time enough, or if I sow
any thing else at the same time as the Indigo, and do not
weed and cultivate, I will pay Ten Sudda Rupees for each
of these acts to the gentlemen, without excuse; and sowing
the Indigo Seed when it is sown, according to order.
If I fulfil in any one of the conditions, I will make good
the same as above specified to the gentlemen, by making
an allowance in the account, or debiting me the same.
If it be proved, I have allowed grazing two or three days
in the Indigo Field, I will pay at One Rupee per man,
and if the Crop be running to seed, and be destroyed by
Cattle grazing, I will pay Ten Rupees per man in the
account, on the decision of the gentlemen. I will leave the
Indigo Crop to run to seed as ordered, and will not dig or
plough the Indigo Field for the cultivation of any thing
else without permission. I will loosen the soil on the day
I am ordered.

No. 8.

TRANSLATION OF DUSTUCK, UNDER THE SEAL OF THE
TEHSELDAR OF PERGUNNAH NIZAMABAD, AND ISSUED
BY THE NAIB OF JOYGOPAUL PARREN, MUHTAB
ROY.

Be it known to BUCKTAUR KHAN:

I have heard that you have Indigo: therefore a man
is sent, that the Indigo may be dug up, and other articles
sown

Fail not.

Dated 11th, (Month not perceivable.)

A true Translation,

W. C. BLAQUIERE.

No. 9.

*Agreement entered into by BAHMUT SING, to cul-
tivate 6 Biggahs of Indigo, on account of Mr. CROM-
MELIN.*

No. 10.

*Agreement entered into by SOORHUL PATTUK,
to cultivate 10 Biggahs of Indigo, on account of Mr.
CROMMELIN.*

No. 11.

*Agreement entered into by RANZEN KHAN, to culti-
vate 11 Biggahs of Indigo, on account of Mr. CROM-
MELIN.*

I have therefore written these few words as an agree-
ment, that it be used as a voucher, when required: date
19th nineteenth of April, 1807, 15th of the light side of the
Moon, in Chait Sumbat 1807, 1214 Faslee.

(On back.)

April 1807.

SOORHUL PATTUK, Inhabitant Godhpoor, 2 Biggahs 6.

A true Translation,

W. C. BLAQUIERE.

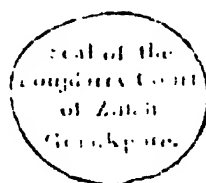
No. 12.

Agreement entered into by GOBINDRAM BRAHMUN, to cultivate 10 Bighas of Indigo, on account of Mr. CROMMELIN.

No. 13.

PROCEEDINGS OF THE POUCHARRY COURT OF ZILLAH GORUCKPORE, BEFORE MR. JOHN ARMISTY, MAGISTRATE, ON THE 15TH JULY, 1807.

Signed Atmool H. 11. 11. 11.
Magistrate's Court.



Whereas, in answer to the letter, dated the 20th June of the above year, orders have been issued on the 2d July of the present year, by the Gentlemen of the Sudder to this effect; That Zemindars and others shall not let out, or sell land to European Gentlemen or any body else, for the purpose of erecting Indigo Godowns and Manufactories, and cultivating Indigo; and that no European Gentlemen, or any body else, be allowed to erect Indigo Godowns and Manufactories, and cultivate Indigo; therefore

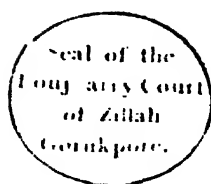
IT IS ORDERED;

That Perwannis directed to the Police Daroohes, from whose Districts information of Indigo Godown having been received, and of advances for the cultivation of Indigo, has been received, be issued; that they inform the Gomasthas of the Manufactory Godown of Indigo of Mr. CROMMELIN and Mr. STEWART, or any body else, whose name they have specified in the Petition, that they will not be permitted to erect Indigo Godowns, and Manufac-

tories, and cultivate Indigo; and that they take Engagements from the Zemindars, that they will not let out or sell Land within their Districts, to any European Gentleman or any body else, for the purpose of erecting Indigo Godowns and Manufactories, and cultivating Indigo according to former Orders; and that, if they have taken any Advance, they may return it, and in lieu of Indigo, cultivate some other thing;—and, wherever the Zemindars and others have taken Advance and cultivated Indigo, it behoveth the Police Darogahs to positively require them to dig up the Indigo Field, and take out the Indigo from the Field, and cultivate some other thing, this being the season for Cultivation in the present year; if therefore they dig up the Indigo-field in due time, and cultivate some other thing, it will be better:—And, that the Police Darogahs use full vigilance, so that not a single Indigo Manufactory be established, and that no one take Indigo, and carry it to the Godowns already established, nor establish Indigo Manufactories: and, in case any one takes Indigo, and carries it to the Godowns, they will attach such Indigo, and send information thereof to the Presence, after which suitable orders will be given by the Presence; and they will not permit any one to erect Indigo Godowns and Manufactories, nor cultivate it.

A true Translation,

W. C. BLAQUIERE,



*Served Ahmad Hussein,
 Kachhary Serindabadur.*

TO THE GENTLEMAN, HIGH IN DIGNITY, THE LORD
 OF PLINY AND DISTRIBUTOR OF JUSTICE.

I was honored with your Perwanna, dated the 15th July,
 1847, directing thus :

“ In answer to the letter, dated the 20th June of the
 “ present year, orders have been issued on the 2d July of
 “ the above year by the Gentlemen at the Sudder, to this
 “ effect, that Zemindars and others shall not let out or sell
 “ Land to European Gentlemen, or any body else, for the
 “ purpose of erecting Indigo Godowns and Manufactories,
 “ or Cultivation of Indigo; and that no European Gentle-
 “ man or any body else be allowed to erect Indigo God-
 “ downs and Manufactories, and cultivate Indigo. It is
 “ therefore directed, that I strictly inform the Cultivators
 “ Surnasas in Buzabva, whose Godown is in the Poorub
 “ putty, and Goksootrasong, whose Godown is situated
 “ at Howapetty and Bhoor; and, the letter of Mr. Birch
 “ on the part of Mr. Croomwell, Esq. at the Factory of the
 “ Surear was directed to me, that they will not be per-
 “ mitted to erect Indigo Godowns and Manufactories, and
 “ cultivate Indigo, and take Engagements from the Ze-
 “ mindars: that they will not let out or sell Land within
 “ their District, to any European Gentleman or to any
 “ body else, for the purpose of erecting Indigo Godowns
 “ and Manufactories, and cultivating Indigo, according to
 “ former orders: that, if they have taken any Advance,
 “ they return it, and in lieu of Indigo, cultivate some

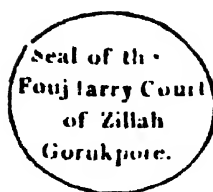
“ other thing; and, whenever the Zemindars and others
 “ have taken Advance and cultivated Indigo, it behoveth
 “ the Police Daroghas, (that is, me,) to positively require
 “ them to dig up the Indigo Field and take out the Indigo
 “ from the Field, and cultivate some other thing; this being
 “ the season for cultivation in the present year, if they
 “ dig up the Indigo Field in due time, and cultivate some
 “ other thing, it will be better; that I will use full vigi-
 “ lance, so that not a single Indigo Manufactory be esta-
 “ blished, and that no one take Indigo, and carry it to the
 “ Godowns already established, nor establish Indigo Manu-
 “ factories, nor cultivate it; and, in case any one takes In-
 “ digo, and carries it to the Godowns, I will attach such
 “ Indigo and send information thereof to the Presence, af-
 “ ter which suitable orders will be given by the Presence.”
 Agreeably to the orders of the Presence, I positively in-
 formed every one of the Zemindars, Cultivators of Indigo,
 to return the Advances for Indigo, and get the Indigo
 Field dug up, and cultivate some other thing; and conse-
 quently all the Cultivators got the Indigo dug up, and are-
 preparing for some other thing without delay. Some persons
 go to return the Advances to the Gomashas at the Godowns,
 but the said Gomashas will not take the same.—Some per-
 sons make evasive excuses, in returning the Advances.

For the future, I have taken Engagements from the Ze-
 mindars, that they will not let out or sell Lands without
 informing the Presence, to any European Gentleman, or to
 any body else within their Districts, for the purpose of
 erecting Indigo Godowns and Manufactories, and cultiva-
 tion of Indigo.—Date 14th August, 1807.

*Petition of JOYGORAI L
 PANREN, Police Darogha of Pergunna
 Nizamabad and Per-
 gunna Mubathhujjun
 in Talook Suorjoo-
 poor.*

*KHIMCHUND VAKEEL
 delivered, 31st Au-
 gust, 1807.*

KHIMCHUND VAKEEL.



27TH SEPTEMBER, 1807.

ORDERED,

That a *Perwanna* be directed to the Police Darogha, informing him that orders were not formerly sent to him, to cause the Cultivators of Indigo to return the Advances by force, but that he was directed only to explain this point to them. It therefore behoveth him, not to adopt any measures for causing the Advances to be returned, as this is at the option of the Cultivators of Indigo.

A true Translation,

W. C. BLAQUIERE.

No. 15.

(COPY.)

TO THE MAGISTRATE of GORAKHPORE.

SIR,

Judicial Dept.] I am directed by the Right Hon'ble the Governor General in Council to acknowledge the receipt of a letter from you, dated the 20th ultimo, with its enclosures; and, to acquaint you, that, conformably to the determination of Government, expressed in my letter to the Board of Revenue, under date the 19th February last, the Governor General in Council desires, that you will take the necessary measures, for preventing the individuals mentioned in your letter, from occupying any Ground,

or engaging in the Manufacture of Indigo, within the limits of your Jurisdiction.

I am, &c.

(Signed) G. DOWDESWELL,
Sec. to Govt. Judicial Dept.

COUNCIL CHAMBER, }
2d July, 1807. }

No. 16.

(COPIES.)

TO GEORGE DOWDESWELL, Esq. Secretary to Government, in the Judicial Department, Fort William.

SIR,

Foujdarry Adawlut.] 1. I beg leave to submit the following report, for the information and order of the Honorable the Governor General in Council.

2. On the 16th ultimo, I received a report from the Tehseeldar of Pergunnah Cawreeah Telhanee, announcing, that Mr. STEWART, a Resident of the Province of Benares, had deputed his Gomastah BENNEEPERSAUD, Mozah Bhelumpore Chuprah, in Pergunnah Tilhantee, and that the said Gomastah had there commenced to erect an Indigo Factory for his master.

3. On the 25th ultimo, I received two reports from the Tehseeldar of Gopaulpore Attrowleeah; stating, that the aforesaid Gomastah of Mr. STEWART was likewise establishing two Indigo Factories within his Jurisdiction, on the part of that gentleman, viz. one at Mozah Nugwah Bedoo, and the other at Utcheybut, in Pergunnah Gopaulpore.

4. In consequence of the above communications, I deemed it to be my duty, on the 30th ultimo, to issue circular Perwannahs to all the Police Darogahs, calling upon them to ascertain, and report, what Indigo Factories had been established within their respective Jurisdictions, and directing them to inform the Zemindars, that they were prohibited, by existing Regulations, from renting or disposing of any Lands to Europeans, whether for commercial, or

other purposes, till the prescribed sanction should have been obtained by such Europeans from the Honorable the Governor General in Council.

5. On the 10th instant, I received, in reply to the above Perwannah, a report from the acting Tehseeldar of Pergunnah Gowsee, representing, that Messrs. CROMMELIN and SCOTT, had jointly, in the current year 1214 Fussilee, erected and established an Indigo Factory at Mozah Behandurpore, near Dorgyhaut, and were carrying on the manufacture of that drug.

6. Under these circumstances, it appeared to me proper, to apply to the Collector of this District, for information, whether, during the period of my late absence from Goruckpore, applications from any European gentlemen had been made, through him, to Government, for permission to rent land in this Zillah, for the purpose of establishing Indigo Factories. A copy of Mr. BALFOUR's reply, with copies of the reports of the Tehseeldars alluded to above, I herewith have the honor to transmit, for the inspection and perusal of the Honorable the Governor General in Council.

7. I have further understood, that Mr. H. BAILLIE has also rented some Lands in Azeezghur, for the purpose of cultivating Indigo; and, although I have not yet received all the reports on the above subject from the Tehseeldars, I have nevertheless been credibly informed, that another Indigo Manufactory has been this season established in Pergunnah Mahole, by Messrs. LEIGH and DAVIES, (Natives.) The former is the son of Mr. LEIGH of Juanpore, and the latter of the late Major DAVIES.

8. I think it my duty, in this place, to observe; that, in a District like Goruckpore, the population of which is very inadequate to its extent, a strong and insuperable objection, independent of many others, exists against affording encouragement to the cultivation of Indigo; for which purpose, if permitted, not only the best lands but the best cultivators will be required;—whilst such a diversion of the

labours of the Ryott would not only tend to diminish the culture of grain, but check the progress of the cultivation of waste land.

9. As Messrs. CROMMELIN, SCOTT and STEWART have, in direct violation of the existing Regulations of Government, thus presumed to rent Lands, and establish Indigo Manufactories, without having previously applied for and obtained the requisite license for that purpose, I am necessitated to solicit instructions, how I am to proceed against these gentlemen on the present, as well as against all others, on similar occasions, in future.

I have, &c.

(Signed)

JOHN ARMUTY,

Magistrate.

GORUCKPORE,
20th June, 1807.

{
}

TO JOHN ARMUTY, Esq. Magistrate of Zillah Goruckpore.

SIR,

I have to acknowledge the receipt of your letter of yesterday, and beg to transmit to you, for your information, the annexed extract of a letter from the Secretary to the Government, regarding an application on the part of Mr. YLLO, to hold a few biggahs of Land in this District, for the purpose of erecting Indigo Manufactories. It does not appear, from the records of this office, that any other application of a similar nature was ever made to Government.

I am, &c.

(Signed)

F. BALFOUR,

Collector.

ZILLAH GORUCKPORE, {
12th June, 1807. }

Extract of a Letter from the Secretary to the Government, dated 19th February, 1807.

The Governor General in Council has adopted the resolution generally, of not permitting Europeans to hold

Ground, for the establishment of Indigo Manufactories in the Ceded and Conquered Provinces. You will accordingly acquaint Mr. YELD, that a compliance with his application cannot be granted.

A true Extract,

(Signed) D. CAMPBELL,
Sub-Sec. Board Revenue.

(A true Copy,)

(Signed) F. BALFOUR,
Collector.

No. 17.

(COPY.)

TO GEORGE DOWDSEWELL, Esq. Secretary to Government, in the Judicial Department, Fort William;

SIR,

Foujdarry Adawlut.]

1. In continuation of my address under date the 20th instant, I beg leave to acquaint you, for the information of the Honorable the Governor General in Council, that, from further reports since received from the other Police Darogahs, it appears, that Mr. P. MACKENZIE, (of Darrowley,) has rented 51 biggahs of Land in Mozah Deaschoye, in Pergunnah Selimpore Meejhowlee, at the rate of Rupees 3 per biggah, for the purpose of erecting an Indigo Manufactory, and has executed and signed a Cutoolecat to the Zemindar; and, that a Native, by name KHAN MAHOMMED, has also built some Vats in the same Pergunnah.

2. In Pergunnah Sugree, advances have been made for the cultivation of Indigo, and a Factory established on the part of Messrs. STEWART and BROWN.

3. In the town of Azemghur, a Factory has been also erected by the aforesaid gentlemen, and advances have been, at the same time, made by Mr. CROMWELL, in Pergunnahs Nizamabad, Doorahpar, &c. for the cultivation of Indigo, and two Factories established in the former.

4. On the 26th instant, a Durkhaust was presented to me by the Company's Vakeel, on the part of Mr. CROMMELIN, to the following effect:—That the said gentleman had understood from his agents, BENNEEPERSAUD and RUGBURDIAL, that JOYGOPAL PANREH, the Tehseeldar of the town of Azeemghur, and the Aumlah of the Tehseeldar of Sugree, had prohibited the Zemindars from cultivating Indigo, and had enjoined them to return the advances which had been made to them for that purpose; that, in my circular Purwannah of the 30th ultimo, the renting or disposing of Lands (without a regular permission being previously obtained) to Europeans, was solely prohibited; but, that it contained no injunctions against their receiving advances for the cultivation of Indigo; that the Indigo Factories alluded to above, which he, Mr. CROMMELIN, had only rented for the purpose of manufacturing Indigo, belonged to GOCULCHUND; but, that the advances were made on his part, which was not contrary to any existing orders, because he was authorized by the regulations to trade;—concluding with a request, that orders may be issued to the Tehseeldars, instructing them not only to desist from preventing the cultivation of Indigo, and opposing any advances being made to the Zemindars, but to inform them, that they are at liberty to receive advances and to cultivate Indigo.

5. From the contents and tenor of the above Derkhaust, there is every reason to infer, that, independently of the Factory erected by Mr. CROMMELIN, near Doorgyhaut, alluded to in my former report, and the Manufactories acknowledged to be established in the town of Azeemghur, and in Pergunnah Sugree, those now erecting in Pergunnahs Gopaulpore and Attrowleeah, before noticed in the name of Mr. STEWART, either appertain to that gentleman, or are intended to be rented by him, for the manufacture of Indigo; since BENNEEPERSAUD appears to be the Agent also employed in those Pergunnahs.

6. On a consideration of the circumstances above stated, two questions obviously arose:

1stly. Is Mr. CROMMELIN, as Commercial Resident in the District, authorized *ex officio* to rent Indigo Factories, and manufacture Indigo, without any special sanction for that purpose from Government?

2dly. Is not the renting of a Factory by an European, (altho' erected by a Native,) for the purpose of manufacturing Indigo, a gross and palpable evasion of the existing prohibitory law on that subject?

7. If they be admitted in the affirmative, every Indigo Planter in the Benares Province may with impunity follow the same example, and rent Factories, expressly erected at their own expence, by their Native dependants; and, the whole District of Goruckpore would soon be covered with Indigo Vats, indirectly the property of Europeans, in defiance of the prohibitions and laws of Government, which would in this case become entirely nugatory and ridiculous. I am certainly not sufficiently versed in logic, to perceive the discrimination made by Mr. CROMMELIN, between renting an Indigo Factory built by a Native, and establishing one in his own name, when the result is exactly the same; and, should Mr. CROMMELIN, from the situation which he holds in the District, be permitted to manufacture Indigo to the exclusion of all other Europeans, that drug, as far as relates to the produce of this District, must inevitably terminate in a monopoly; for few or no Natives would willingly undertake to establish Indigo Factories on their own individual account, in opposition or competition, from a want of the necessary funds on their part.

8. I am not aware, whether the prohibition of Government, with regard to the erection of Indigo Factories in the Ceded and Conquered Provinces, extend to Natives; but, I feel extremely solicitous to be informed, whether Europeans (residing in or out of this District) can, without the express sanction of Government, rent Factories built by Natives, and conduct the cultivation and manufacture of Indigo, in the same manner as if they had obtained a regular license to trade and establish Indigo Manufactories in the District.

APPENDIX.

9. Some instructions on the subject have now become the more necessary and expedient, under the explanation afforded by Mr. CROMMELIN, of the nature of his tenure ; since I am totally unacquainted with the custom, practice, and rules observed on similar occasions in other Zillahs, where Indigo Manufactories have been long established by Europeans.

10. In bringing the above subject under the notice of Government, I deem it proper to declare, that I have been actuated by no motive, inimical either to Mr. CROMMELIN or to any other gentleman, whose names have been introduced in the course of my report ; but solely from a conviction, that it is the public duty of every Magistrate to represent to Government the occurrence of any circumstance, which he may conceive to be either prejudicial to the interests of the state, or inconsistent with and in direct violation of the existing laws ; in order that such instructions may be obtained, as Government may, after due enquiry, deem it advisable to issue on the occasion, for his information and guidance.

I have, &c.

(Signed) JOHN ANMUTY,
Magistrate.

GORUCKPORE, }
29th June, 1807. }

No. 18.

(COPY.)

To JOHN ANMUTY, Esq. Magistrate of Goruckpore.

SIR,

1. I am directed to acknowledge the receipt of a letter from you, dated the 29th ultimo.

2. The Hon'ble the Governor General in Council is of opinion, that, so long as it shall be deemed advisable to continue in force the orders which have been passed by Government, prohibiting the establishment of Indigo Manu-

factories by Europeans in the Ceded and Conquered Provinces,—such persons should be prevented from erecting or holding works of that description, indirectly or in the names of their dependants, as well as ostensibly on their own account. The Governor General in Council, however, does not see an necessity for restricting Europeans, who may hold Indigo works with the sanction of Government, in the Province of Benares, from making advances to the Ryots in the adjoining Districts, whether in the Ceded and Conquered Provinces, or in any other part of the Country, for the culture of the weed, nor of course from receiving the produce from the Ryots of those Districts.

3. I am further directed to acquaint you, that Mr. CROMWELL, in his private commercial transactions, must of course be considered subject to the same rules and restrictions, as have been, or may be established, with respect to Europeans in general.

4. In reply to the 8th paragraph of your letter, I am directed to acquaint you, that in prohibiting the establishment of Indigo Manufactories by Europeans in the Ceded and Conquered Provinces, it was by no means intended, to prevent Natives from erecting such works, or from cultivating Indigo on their own account. It has been above observed, that manufactories so erected, are not to be held directly or indirectly by Europeans.

I am, &c.

(Signed)

G. DOWDESWELL,

COUNCIL CHAMBER,
9th July, 1807

}

Sec. to Govt. Judl. Dept.

No. 19.

(COPY.)

PROCEEDINGS OF THE FOUGDARRY COURT OF ZILLAH GORUCKPORE, BEFORE MR. JOHN ARMUTY, MAGISTRATE, ON THE 20TH JULY, 1807.

This day, a letter from the gentlemen at the Sudder,

dated the 9th July, 1807, in answer to a letter from the Presence of the 29th June of the above year, is received ; directing, that no European Gentlemen hire or buy Land, directly or indirectly, from any Zemindars, or be allowed to cultivate or establish Indigo Manufactories and Godowns, directly or indirectly ; but that, if Gentlemen of the Zillah Benares or any other Zillah, make advances for Indigo to the Zemindars of this Zillah, and the Zemindars receive the advances for Indigo and cultivate it, there is no objection, and they are not to be opposed ; that the cultivation of Indigo, belonging to Mr. LEE and Mr. DAVIS be suffered to continue in the same manner as before, and not opposed ; but that care must be taken, that no European Gentleman cultivate Indigo and establish Manufactories in this Zillah, directly or indirectly, or be allowed to hire or purchase Land.—Therefore, it is

ORDERED :

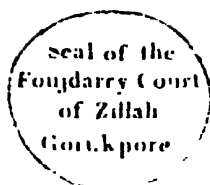
That Perwannahs, directed to the Police Darogahs, be issued conformably to the present proceedings, as written above; and, that they act conformably to the present Perwannah, where former orders have been altered, and conform with the former orders in other respects, and not act contrary thereto.

A true Translation,

W. C. BLAQUIERE.

No. 20.

(COPY.)



**COPY OF PERWANNAS, DIRECTED TO ALL THE POLICE
DAROGHAS.**

This day, a letter from the Gentlemen at the Sudder, dated the month July, 1807, in answer to a letter of the twenty-ninth June of the above year, is received; directing, that no European Gentleman hire or buy land, directly or indirectly, from any Zemindar, or be allowed to cultivate or establish Indigo Manufactories and Godowns, directly or indirectly; but that, if Gentlemen of Zillah Benares or any other Zillah make advances for Indigo to the Zemindars of this Zillah, and the Zemindars receive the advances for Indigo and cultivate it, there is no objection, and they are not to be opposed; that the cultivation of Indigo belonging to Mr. LEE and Mr. DAVIS, be suffered to continue in the same manner as before, and not be opposed; but, that care must be taken that no European Gentleman cultivate Indigo and establish Manufactories in this Zillah, directly or indirectly, or be allowed to hire or purchase land. Therefore, it is directed, that they act conformably to what is written above in this Perwannah, where former orders have been altered, and conform with the former orders in other respects, and not act contrary thereto. Paying strictest attention hereto, they act agreeably to the above.

Date, twentieth July, 1807.

A true Translation,

W. C. BLAQUIERE,

No. 21.

(COPY.)

PERWANNAH, DIRECTED TO ALL THE POLICE DAROGAHs.

Whereas, previously to this, a Perwannah from the Presence has been directed to them, prohibiting the cultivation of Indigo and Manufactory Godowns of Indigo, which European Gentlemen are not be allowed to do;—therefore, it is directed, that, if any Natives of this Country have intention to erect Indigo Manufactory, and cultivate Indigo, they are to direct, that they first come to the Presence, present an application to the Presence, and execute engagements to this purport, that they do not erect Indigo Manufactory on the part of any European Gentleman in any manner, directly indirectly, or clandestinely; and, after their engagements have been delivered in, permission for Indigo Manufactories will be given to the Natives of this Country; and, as to others, they act conformably to former orders; and, in case they act contrary to the orders from the Presence, and cause a loss to any Zemindar, they shall be held responsible for the same. Paying strict attention hereto, they act conformably to the above. Date, twenty-third July, 1807.

A true Translation,

W. C. BLAQUIERE.

No. 22.

(COPY.)

Seal of the
 Foujdary Court
 of Zillah
 Gorakhpore.
 1209

COPY OF PERWANNAH, DIRECTED TO JOYGOPAL PANDE,
POLICE DAROGHA OF PERGUNNAH NIZAMABAD.

Whereas, the Petition sent by him has come to the per-

of the Presence, in answer to the Perwannah dated the twentieth July 1827, representing that he has positively informed the Malgoozars within his district, according to the former Perwannah, that no Malgoozar should sell or let Indigo to European Gentlemen or any body else, or for manufacture of Indigo, directly or indirectly, and that some other thing be cultivated in the ground where Indigo has been cultivated; and, that, according to the orders in the second Perwannah, dated the twentieth July, digging up the Indigo Field and cultivating some other thing, has been desired from, by the Zemindars of the villages of Pergunnah Meelabhoopun, who have taken advances from the godown of Mr. Batters, whose godown is in Pergunnah Pather in Suren Ghosspore, within Zillah Benares, and have cultivated Indigo in their village; and, that, in Pergunnah Nizamabad and Soongoor, where an Indigo Godown is erected, and Indigo Manufactory established, and a license made in the name of Government No. regarding which Mr. Batten has written, and which is also in the name of Sourayson Bengally, the cultivation of Indigo has been put a stop to, according to the Perwannah, dated the nineteenth July, and the Indigo, which was cultivated in different villages, is digging up and the Malgoozars are urged to dig up what is not yet so doing; therefore, it is written, that no such order was formerly issued to him, directing that he should cause the Indigo Plant to be dug up from the fields; but, that an order to this effect was issued to him, that he should inform the Zemindars and cultivators of Indigo, that it would be beneficial and not prejudicial to them to remove the Indigo Plant from the fields, and cultivate some other thing therein, and leave it at their option; and, that there was a prohibition against European Gentlemen's cultivating Indigo and erecting Godowns in this Zillah, but, that the Gentlemen, who have erected Godowns in Zillah Benares, or Indigo Godowns in any other Zillah, and have made advances to the Zemindars of this Zillah, and those Zemindars who have cultivated Indigo, and also, exclusive of European Gentlemen, Hindoostanese

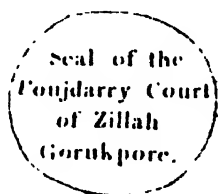
people, who have cultivated Indigo in this Zillah, were not to be opposed on any account. That, should it hereafter be proved, that he has forcibly caused Indigo to be dug up from the field, he will be held responsible according to the former order ; and, that he be directed, not to interfere himself in having the Indigo dug up, but only inform the Zemindars, and that he pay strict attention hereto, and act conformable to the above. Date, 1st August, 1807.

A True Translation,

W. C. BLAQUIERE,

No. 23.

(COPY.)



**COPY OF PERWANNAH, DIRECTED TO JOYGOPALL PANREN,
POLICE DAROGAH OF PLUGUNNAH NIZAMABAD, &c.**

From a perusal of the Petition of *Chooatoll*, Vakeel of Government, which is presented to the Presence on behalf of Mr. CROMMELIN, Commercial Resident ; it appears, that he has not as yet desisted from causing the Indigo fields of the Zemindars, who received advances from Mr. CROMMELIN, Commercial Resident, and cultivated Indigo, to be dug up ; but, that he has caused one hundred and fifty Beggahs of Indigo field to be dug up. As a Perwannah has been directed to him, directing him, not to cause the Indigo fields to be dug up, and he has acted contrary thereto, and is causing the Indigo fields of Zemindars to be dug up ; therefore, it is directed, that no order to this purport was sent to him, but that a Perwannah was directed to him, prohib-

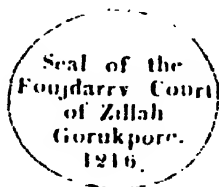
biting his so doing; notwithstanding which, he acts contrary to the orders from the Presence. That, if any Zemindar complain of the loss thereon, he will be held responsible for the same, and that he withhold from such improper acts, as causing Indigo to be dug up: but, that he take care, that the said Indigo Plant be not conveyed to the above Gentleman's Godowns in this Zillah; and, that, if Mr CROMMELIN's men carry the Indigo Plant to Zillah Benares, he is not to oppose, nor hinder their so doing in the same manner, as in the instance of other Gentlemen carrying Indigo Plant, whose godowns have been established in Zillah Benares, agreeably to the order of the Honorable the Governor General, respecting which a Perwannah has been issued from the Presence, not to make any opposition. Paying strict attention hereto, he will act agreeably to the above. Date, the 9th of September, 1807.

A True Translation,

W. C. BLACQUIERE,

No. 24.

(COPY.)



COPY OF PERWANNAH, DIRECTED TO ALL THE POLICE DAROGAHS, PURSUANT TO THE PROCEEDINGS OF THE 9TH SEPTEMBER, 1807.

Whereas, before this, Perwannahs were directed to them, stating that European Gentlemen are prohibited from erecting Indigo Godowns and cultivating Indigo in the Zillah,

according to the orders of the Gentlemen at the Sudder, without the permission of the Hon'ble the Governor General, and the Zemindars of this Zillah acted contrary thereto, and received advances and cultivated Indigo, in consequence of which orders were issued from hence, that the Zemindars of this Zillah be informed, that now, agreeably to the orders of the Gentlemen at the Sudder, every European Gentleman is prohibited from erecting Indigo Godowns and cultivating Indigo; and, as the present is the season for cultivation and tillage, if they dig up the Indigo fields, and, in lieu thereof, sow some other grain, it is better for them. That no order was sent to them, that they or their men should go to the fields, and themselves cause the Indigo fields to be dug up:—therefore, it is again directed, that they refrain from so doing, that is, from causing the Indigo fields of Zemindars which are now ready, to be dug up, either by themselves or their people; and, if they act contrary to this, they will be held responsible at last when the Zemindars complain of the loss occasioned thereby,—because digging up the Indigo fields or cultivating any other thing, is at the option of the Zemindars; and, that they pay strict attention hereto, and act according to the above.

A true Translation,

W. C. BLAQUIERE.

No. 25.

(Cory.)

TO THE GENTLEMAN OF EXALTED DIGNITY, THE LORD OF AFFLUENCE AND DISTRIBUTOR OF JUSTICE, PRESERVATION!

On the 21st July, 1807, I was honored with your Perwannah, dated the 20th of the above month and year, to this effect:—This day, a letter in English, from the Gentlemen at the Sudder, dated the 20th July, 1807, in answer to a letter from the Presence, of the 29th June of the above year, is received; directing, that, within this Zillah, no European Gentleman hire or buy Land, directly or indirect.

ly, from any Zemindar,—or be allowed to cultivate or establish Indigo Manufactories and Godowns in this Zillah, directly or indirectly; but that, if Gentlemen of Zillah Benares, or any other Zillah, make advances for Indigo to Zemindars, and the Zemindars receive the advances for Indigo and cultivate it, there is no objection. Therefore, it is directed to me, that I do not permit European Gentlemen to buy or hire Land in this Zillah, directly or indirectly,—nor to cultivate nor establish Indigo Manufactories and Godowns, directly or indirectly; but that, if Zemindars receive advances from the Gentlemen of Zillah Benares or any other Zillah, and cultivate and establish Indigo Manufactories, I permit the same and not oppose it; and that I act conformably to the present Perwannah, where former orders have been altered, and conform with the former orders in other respects, and not act contrary thereto;—but take care, that no European Gentleman cultivate Indigo and establish Manufactories in this Zillah, directly or indirectly, nor be allowed to hire or purchase land.”

Sir, in obedience to the order in the former Perwannah, dated the 15th July of the above year, I positively informed the Malgoozars of the Villages in Pergunnah Nizamabad, Pergunnah Moohatbhujjun and Talook Soorujpoor, under me, that no Malgoozar should sell or let land to European Gentlemen or any body else, for manufactory or cultivation of Indigo, directly or indirectly, and that the ground, where Indigo had been cultivated, may be dug up and some other thing cultivated. In conformity to the orders contained in the second Perwannah, dated the 20th July of the above year, digging up the Indigo and cultivating some other thing, has been desisted from, by the Zemindars of the Villages of Pergunnah Moohatbhujjun, who have taken advances from the Godown of Mr. BAILLIE, whose Godown is in Pergunnah Pachater, in Surcar Ghazee-pore, within Zillah Benares, and have cultivated Indigo in their Villages: and, in Pergunnah Nizamabad and Talook Soorujpoor, where an Indigo Godown is erected, and Indigo Manufactories established, and advances made in the

name of GOKOOLCHUND, regarding which Mr. BIRCH had written, and which is also in the name of SURBANUND Bengallee, the cultivation of Indigo has been put a stop to, according to the Perwannah dated the 15th July of the above year, and the Indigo which was cultivated in different Villages, is digging up; and the Malgoozars and cultivators being urged to dig up what is not yet so done, it will soon be dug up. Sir, I do not know which Gentlemen are of Benares and other Zillahs. Whoever applies to the Presence and brings a Perwannah, prohibiting opposition, I will not oppose until the arrival of a Perwannah. The Indigo which remains is digging up, according to the former order. When all Indigo in my District, where some other thing will be cultivated, is dug up, I will send an answer to the former Perwannah, specifying the quantity of ground. I have represented this for your information. May the sun of your prosperity be radiant! Dae, the 27th July, 1807.

Petition of JOYGOPAUL

13th July, 1807.

PERREN, Police Darogah of Pergunnah Nizamabad, in Moubatbhujjun, in Tulook Soorajpore.

*KHEMCHUND VAKTEL
Delivered.*

KHEMCHUND VAKTEL.

1st August, 1807.

ORDERED;

That a Perwannah, directed to the Police Darogah, be written, informing him, that no such order was formerly issued to him, directing, that he should himself cause the Indigo Plant to be dug up from the fields; but, that an order to this effect was issued to him, that he should inform the Zemindars and Cultivators of Indigo, that it would be beneficial and not prejudicial to them to remove the Indigo Plant from the fields, and cultivate some other thing therein, and leave it at their option; and, that there was a prohibition against European Gentlemen's cultivating Indigo and

erecting Godowns in this Zillah; but that the Gentlemen, who have erected Godowns in Zillah Benares, or Indigo Godowns in any other Zillah, and have made advances to the Zemindars of this Zillah, and those Zemindars have cultivated Indigo, and also (exclusive of European Gentlemen,) Hindoostanee people, who have cultivated Indigo in this Zillah, were not to be opposed on any account. Should it hereafter be proved, that he has forcibly caused Indigo to be dug up from the field, he will be held responsible, according to the former order; and, that he be directed not to interfere himself in having the Indigo dug up, but only to inform the Zemindars.

A true Translation,

W. C. BLAQUIERE.

No. 26.

TO THE HIGH IN DIGNITY, LORD OF AFFLUENCE, PRESERVATION!

I was honored with your Perwannah of the 9th September, 1808, on the 15th of the said month and year, to this effect:

That from perusal of the Petition of CHOOLALL, Vakeel of Government, which was presented to you on behalf of Mr. CROMMELIN, Commercial Resident, it appears, that I have not as yet desisted from causing the Indigo Fields of the Zemindars, who received advances from Mr. CROMMELIN, Commercial Resident, and cultivated Indigo, to be dug up; but, that I have caused one hundred and fifty biggahs of Indigo Field to be dug up;—therefore it is written, that no order to this purport was sent to me, but, that a Perwannah was directed to me, prohibiting my so doing; notwithstanding which, I still act contrary to the orders from the Presence; and, that I withhold from such improper acts, (that is, causing Indigo to be dug up,) but, that I take care that the said Indigo Plant be not conveyed to the above Gentleman's Godown, which is in this Zillah; and that, if Mr. CROMMELIN's

men carry the Indigo Plant to Zillah Benares, I am not to oppose nor hinder their so doing, in the same manner as in the case of other Gentlemen carrying Indigo Plant, whose Godowns are in Zillah Benares. Sir, in conformity to the former Perwannah, dated the 15th July 1807, the Zemindars were urged to have the Indigo dug up, and cultivate some other thing, for their own benefit. Two subsequent Perwannahs, one dated the 20th July of the above year, and another in answer to my representation, dated the 1st August of the above year, prohibiting me to cause Indigo to be dug up myself, were issued,—since which date, I have not even urged any Zemindar to have the Indigo dug up. I do not know, on what ground CHOOLALL has stated this point in his Petition; for, what benefit can I derive from having the Indigo dug up? The profit or loss in having Indigo dug up or not dug up, is the Zemindars'; and they may, for their own benefit, have dug up the Indigo, and cultivated something else. Many Zemindars have preserved the crop of Indigo; and, now, as the Indigo Plant is ready, they have built Vats in their Villages, for the purpose of manufacturing Indigo, and are getting prepared to receive the Plant. Agreeably to the order from the Presence, I will take care that Indigo Plant shall not go to the above Gentleman's Godown; and, if the said Gentleman's people carry the Indigo Plant to Zillah Benares, I will not oppose it.—How can I act contrary to the orders from the Presence, to the breadth of even a single hair! May the sun of your prosperity be ever radiant! Date, 23d October, 1807,

*Petition of JOYGOPAL
PANREN, Police Da-
rogah of Pergunnah
Nizamabad, &c.*

*23th October, 1807.
Ordered, that this be
kept among the Re-
cords.*

A true Translation,

W C. BLAQUIERE

No. 27.

(COPY.)

TO THE RIGHT HONORABLE GILBERT, LORD MINTO,
GOVERNOR GENERAL IN COUNCIL, FORT WILLIAM.
MY LORD,

The Magistrate of Gorukpore, in a report made to the Honorable the Governor General in Council, in the month of June last, on the subject of the establishment of Indigo Factories and the cultivation of Indigo, generally, in the District under his charge, referred to some Factories which I had rented, for the purpose of manufacturing Indigo in that District, and obtained the orders of Government for preventing me from occupying any Ground, or engaging in the manufacture of Indigo within the limits of his jurisdiction.

2. Previously to transmitting the report above-mentioned, the Magistrate did not apply to me for any information respecting the grounds on which I had entered into concerns in Indigo. No opportunity therefore was afforded me in the first instance, of submitting, for the consideration of Government, an explanation of the particular circumstances, under which the concerns alluded to, had been entered into.

3. I presume, the Magistrate might with the greatest propriety have paid attention to the interests of an individual, who had property to a very considerable amount at stake, without any dereliction of his public duty. It would scarcely have been more than an act of common justice; but, under the line of conduct pursued, I found myself at once involved in consequences of the most ruinous nature to my private interests, without a knowledge of the grounds on which I had been implicated. Indeed, so very promptly were the Magistrate's orders on the occasion issued, and carried into effect, that his officers had actually rooted up some Indigo Plant, which I had advanced for at Azimghur, before his letter, communicating to me the orders of Government on the subject, had reached me, through the common medium of the Dawk;

so that, I had in reality sustained an injury, before it was possible for me to appeal to the indulgence of the Honorable the Governor General in Council, as a last resource.

4. In the situation in which I have thus been placed, I feel it to be an incumbent duty respectfully to submit to your Lordship in Council, the particular circumstances under which I was originally induced to enter into concerns in Indigo in the district of Gorukpore; with the view, as well of exonerating myself from the most distant imputation of an intentional attempt, indirectly to evade the regulations of Government, as of submitting my case with deference to your Lordship's liberal and indulgent consideration.

5. In the month of November last, I transmitted an application to the Hon'ble the Governor General in Council, for permission to erect Indigo Works in the District of Gorukpore, generally, under the rules prescribed by Regulation 19, of 1803; but, having previously ascertained, that Mr. BECTER, (who, at the time, was in a similar situation with myself, being a Commercial Resident in a Ceded District,) had applied for and obtained the sanction of Government, to erect Indigo Works at Bareilly, I naturally concluded, that my public application was a matter of form only, and that it would in due course be complied with; and, I was accordingly induced to purchase and prepare materials and to lay down the foundations of two or three Factories, that no time might be lost in completing the buildings before the rains of the ensuing season commenced.

6. To my great disappointment, however, I was informed, that Government had particular objections to grant the permission I had applied for. I therefore withdrew my public letter on the subject, and gave up the idea of erecting Indigo Factories on my own account.

7. Conceiving, that the objection of Government originated solely in the impolicy of permitting Europeans of any description, to have any right or title in the soil,

and knowing that there could not be the least objection to such a right or title being vested in a Native of the Country, I applied to a respectable Native, and prevailed on him to erect works on his own account, under the express condition, that I would rent them for a certain number of years. By this arrangement, the expences I had incurred, were saved to me; and the objections of Government were, to the best of my judgment, effectually obviated. In perfect confidence therefore, that I was acting with strict propriety, I made advances openly to the Ryots, for the cultivation of the Indigo Plant.

8. In making the advances, I did not become, either the immediate holder or cultivator of the Land. The risk of cultivation was exclusively the Ryots'; and, as I merely received the produce at the rate of one rupee for a certain number of bundles of Indigo Plant, I could not directly or indirectly infringe Regulation 19, of 1802.

9. For nearly a period of six months, no enquiry whatever was made respecting the works, nor any interruption offered to the building of them; although there were no less than seven Factories erected on the Western side of the Dewak, immediately in the District of Azimghur, and about five thousand biggahs of Land had been engaged and advanced for, of which seven hundred and fifty biggahs had been actually cultivated and sown with Indigo Seed. However, when the Factories were on the point of being completed, and the season for proceeding in the cultivation had become favorable, an unexpected Perwannah from the Magistrate, dated the 30th of May last, at once put a stop to the buildings and the cultivation.

10. At this period, the Factories had cost the Proprietor near 33,000 Rupees; and the advances for Plant, with various incidental charges, amounted to about 20,000 Rupees more. Under existing circumstances, the realization of the latter must at all events be distant, if not in a great degree precarious; and, as I consider myself res-

possible for the former also, the aggregate of my property, involved in the concern in question, amounts to upwards of 50,000 Rupees.

11. Had an enquiry been made by the Magistrate, or his Officers, at the time the works were commenced, a reference to your Lordship in Council might have been immediately made, and had your Lordship's determination been unfavorable to my wishes, the intention might have been given up, with little comparative loss; but, under the circumstances above stated, and the confident impression of my own mind, that the business had been conducted, in every respect, in an unexceptionable manner, the unexpected stoppage of the works, at the moment most favorable to every expectation I could have indulged, occasioned not only the most cruel disappointment, but a very serious and heavy loss.

12. The works remain in an unfinished state; of the 750 biggahs allocated, the Plant of full 150 biggahs has been taken up by the Magistrate's Officers, and that of the remaining 600 biggahs cannot be delivered by the Ryots at the works; and upwards of 4,000 biggahs are still uncultivated, though the advances for the cultivation of them were made several months ago. In short, the present season is entirely lost to me; and, unless your Lordship in Council should deem the situation I am placed in to be worthy of indulgent consideration, the result to me may be most ruinous.

13. I can most conscientiously declare, that throughout the whole of the business in question, I have not been actuated by any sinister motive whatever. My character, both in public and private life, will, I doubt not, give due weight to this assertion. If I have deviated, it has been under an erroneous impression, free from every improper view, or indirect intention of promoting my private interests, by an evasion of the regulations of Government.

14. By Regulation 19, of 1803, your Lordship in Council may permit Europeans of any description, to hold

Indigo Works in the Ceded and Conquered Provinces ; and, as the exercise of this indulgence, in the instance of Mr. BECHER in 1804, occasioned, in reality, my being led into the situation in which I am at present placed, am induced to entertain a sanguine hope, that, on a due consideration of the circumstances I have taken the liberty of submitting, your Lordship will be pleased to extend a similar indulgence to me, by permitting me to hold the works herein alluded to, in my own name,—to complete them,—and to carry on the manufacture of Indigo, in the District of Gorukpore, on my own account.

15. Under such an indulgence, the loss I must unavoidably experience, in the first instance, will gradually be reimbursed ; and, should your Lordship deem it to be expedient, I will readily enter into full security, not to dispose of the works to any European, without the express sanction of Government.

I have the honor to be, &c.

(Signed)

CROMMELIN.

CALCUTTA,

9th October, 1807.

(COPY.)

To C. R. CROMMELIN, Esq.

SIR,

I am directed to acknowledge the receipt of a letter from you, dated the 9th instant, and to acquaint you, that, in consideration of the circumstances stated by you, the Right Honourable the Governor General in Council has been pleased to comply with your application for permission to hold the Indigo Works described in your letter. You will accordingly apply to the Collector of Gorukpore, to depute an Officer to measure the ground occupied by the different Factories, in conformity to Section 5, Regulation 19, 1803, and to report the result to Government ;—when such further orders will be passed, as may appear to be

proper, (with reference to the established rule in cases of this nature,) respecting the quantity of ground to be held by you. I am, &c.

(Signed) G. DOWDESWELL,

COUNCIL CHAMBER,
16th October, 1807.

Sec. to Govt. Rev. Dept.

No. 29.

(COPY.)

TO THE MAGISTRATE OF GORUCKPORE.

SIR,

Judicial Department. Government having had under consideration a representation from Mr. CROMMELIN, respecting the Indigo Works established by him in the District of Goruckpore, I am directed to acquaint you, that the Right Hon'ble the Governor General in Council has been pleased to grant permission to Mr. CROMMELIN, to hold the Works, &c.

2. The specified quantity of Ground attached to the different Factories, will be ascertained in the Revenue Department.

I am, &c.
G. DOWDESWELL,

COUNCIL CHAMBER,
16th October, 1807.

Sec. to Govt. Jud. Dept.

No. 30.

COPY OF PERWANNAH TO POLICE DAROGAH.

Whereas, this day, a Letter in English, from the Gentleman at the Sudder, dated 16th October of the present year, was received, on the subject of Indigo, to this purport: "That the Right Hon'ble the Governor General, in consequence of an application of Mr. CROMMELIN, Resident, has been pleased to permit the establishment of Indigo Manufactory Godowns, and the cultivation thereof, in this

Zillah. As the aforesaid Gentleman has now permission from the Sudder to establish Indigo Manufactory Godowns and cultivate it, you will now consider the order respecting the Manufactory Godowns and cultivation of Indigo of the above Gentleman, formerly issued, to be repealed, and in no manner oppose the above Gentleman's Manufactory Godowns and cultivation of Indigo: but, with respect to others, you will act agreeably to former Orders. Consider strict attention requisite to this. Date, twenty-seventh October, 1807.

A true Translation

W. C. BLAQUIER



